

ENGROSSED
COMMITTEE SUBSTITUTE
FOR
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FOR

Senate Bill No. 60

(By Senators Miller and Unger)

[Originating in the Committee on the Judiciary;
reported February 24, 2012.]

A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to making it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and recklessly cause serious bodily injury to another person; and establishing penalties for first and subsequent violations of certain provisions.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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;

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

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

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

9 eight hundredths of one percent or more, by weight; and

10 (2) While 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

18 the death, is guilty of a felony and, upon conviction thereof,

19 shall be imprisoned in a state correctional facility for not less

20 than two years nor more than ten years and shall be fined
21 not less than \$1,000 nor more than \$3,000.

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;

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

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

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
30 eight hundredths of one percent or more, by weight; and

31 (2) While 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,
35 is guilty of a misdemeanor and, upon conviction thereof,
36 shall be confined in jail for not less than ninety days nor
37 more than one year and shall be fined not less than \$500 nor
38 more than \$1,000.

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;

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

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

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
47 eight hundredths of one percent or more, by weight; and

48 (2) While 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
53 in jail for not less than one day nor more than one year,
54 which jail term is to include actual confinement of not less
55 than twenty-four hours, and shall be fined not less than \$200
56 nor more than \$1,000.

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;

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

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

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
65 eight hundredths of one percent or more, by weight; and

66 (2) While driving does any act forbidden by law or fails
67 to perform any duty imposed by law in the driving of the
68 vehicle, which act or failure proximately causes serious
69 bodily injury to any person other than himself or herself; and

70 (3) Commits the act or failure in reckless disregard of the
71 safety of others and when the influence of alcohol, controlled
72 substances or drugs is shown to be a contributing cause to
73 the serious bodily injury, is guilty of a felony and, upon
74 conviction thereof, shall be imprisoned in a state correc-
75 tional facility for not less than one nor more than three years
76 and the court may, in its discretion, impose a fine of not less
77 than \$3,000 nor more than \$5,000.

78 (4) For purposes of this subsection, "serious bodily
79 injury" means bodily injury which creates a substantial risk
80 of death, which causes serious or prolonged disfigurement,
81 prolonged impairment of health or prolonged loss or impair-
82 ment of the function of any bodily organ.

83 (5) A person violating this subsection, for the second or
84 any subsequent offense of this subsection, is guilty of a
85 felony and, upon conviction thereof, shall be imprisoned in

86 a state correctional facility for not less than three nor more
87 than five years and the court may, in its discretion, impose a
88 fine of not less than \$3,000 nor more than \$5,000.

89 ~~(d)~~ (e) Any person who:

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

91 (A) Is under the influence of alcohol;

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

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

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

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

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

106 ~~(e)~~ (f) Any person who drives a vehicle in this state while
107 he or she has an alcohol concentration in his or her blood of

108 fifteen hundredths of one percent or more, by weight, is
109 guilty of a misdemeanor and, upon conviction thereof, shall
110 be confined in jail for not less than two days nor more than
111 six months, which jail term is to include actual confinement
112 of not less than twenty-four hours, and shall be fined not less
113 than \$200 nor more than \$1,000. A person sentenced pursu-
114 ant to this subdivision shall receive credit for any period of
115 actual confinement he or she served upon arrest for the
116 subject offense.

117 ~~(f)~~ (g) Any person who, being an habitual user of narcotic
118 drugs or amphetamine or any derivative thereof, drives a
119 vehicle in this state is guilty of a misdemeanor and, upon
120 conviction thereof, shall be confined in jail for not less than
121 one day nor more than six months, which jail term is to
122 include actual confinement of not less than twenty-four
123 hours, and shall be fined not less than \$100 nor more than
124 \$500. A person sentenced pursuant to this subdivision shall
125 receive credit for any period of actual confinement he or she
126 served upon arrest for the subject offense.

127 ~~(g)~~ (h) Any person who:

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

130 (A) Is under the influence of alcohol;

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

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

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

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

137 (2) Is guilty of a misdemeanor and, upon conviction
138 thereof, shall be confined in jail for not more than six
139 months and shall be fined not less than \$100 nor more than
140 \$500.

141 ~~(h)~~ (i) Any person who knowingly permits his or her
142 vehicle to be driven in this state by any other person who is
143 an habitual user of narcotic drugs or amphetamine or any
144 derivative thereof is guilty of a misdemeanor and, upon
145 conviction thereof, shall be confined in jail for not more than
146 six months and shall be fined not less than \$100 nor more
147 than \$500.

148 ~~(h)~~ (j) Any person under the age of twenty-one years who
149 drives a vehicle in this state while he or she has an alcohol
150 concentration in his or her blood of two hundredths of one
151 percent or more, by weight, but less than eight hundredths of

152 one percent, by weight, for a first offense under this subsec-
153 tion is guilty of a misdemeanor and, upon conviction thereof,
154 shall be fined not less than \$25 nor more than \$100. For a
155 second or subsequent offense under this subsection, the
156 person is guilty of a misdemeanor and, upon conviction
157 thereof, shall be confined in jail for twenty-four hours and
158 shall be fined not less than \$100 nor more than \$500. A
159 person who is charged with a first offense under the provi-
160 sions of this subsection may move for a continuance of the
161 proceedings, from time to time, to allow the person to
162 participate in the Motor Vehicle Alcohol Test and Lock
163 Program as provided in section three-a, article five-a of this
164 chapter. Upon successful completion of the program, the
165 court shall dismiss the charge against the person and
166 expunge the person's record as it relates to the alleged
167 offense. In the event the person fails to successfully complete
168 the program, the court shall proceed to an adjudication of
169 the alleged offense. A motion for a continuance under this
170 subsection may not be construed as an admission or be used
171 as evidence. A person arrested and charged with an offense
172 under the provisions of this subsection or subsection (a), (b),
173 (c), (d), (e), (f), (g), (h) or ~~(h)~~ (i) of this section may not also be

174 charged with an offense under this subsection arising out of
175 the same transaction or occurrence.

176 ~~(j)~~ (k) Any person who:

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

178 (A) Is under the influence of alcohol;

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

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

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

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

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

193 ~~(k)~~ (l) A person violating any provision of subsection (b),
194 (c), (d), (e), (f), (g), (h) or ~~(h)~~ (i) of this section, for the second
195 offense under this section, is guilty of a misdemeanor and,

196 upon conviction thereof, shall be confined in jail for not less
197 than six months nor more than one year and the court may,
198 in its discretion, impose a fine of not less than \$1,000 nor
199 more than \$3,000.

200 ~~(h)~~ (m) A person violating any provision of subsection (b),
201 (c), (d), (e), (f), (g), (h) or ~~(h)~~ (i) of this section, for the third or
202 any subsequent offense under this section, is guilty of a
203 felony and, upon conviction thereof, shall be imprisoned in
204 a state correctional facility for not less than one nor more
205 than three years and the court may, in its discretion, impose
206 a fine of not less than \$3,000 nor more than \$5,000.

207 ~~(m)~~ (n) For purposes of subsections ~~(k)~~ and ~~(j)~~ (l) and (m)
208 of this section relating to second, third and subsequent
209 offenses, the following events shall be regarded as offenses
210 under this section:

211 (1) Any conviction under the provisions of subsection (a),
212 (b), (c), (d), (e), (f), (g) or ~~(g)~~ (h) of this section or under a prior
213 enactment of this section for an offense which occurred
214 within the ten-year period immediately preceding the date of
215 arrest in the current proceeding;

216 (2) Any conviction under a municipal ordinance of this
217 state or any other state or a statute of the United States or of

218 any other state of an offense which has the same elements as
219 an offense described in subsection (a), (b), (c), (d), (e), (f), (g),
220 (h) or ~~(h)~~ (i) of this section, which offense occurred within the
221 ten-year period immediately preceding the date of arrest in
222 the current proceeding; and,

223 (3) Any period of conditional probation imposed pursu-
224 ant section two-b of this article for violation of subsection
225 (d) of this article, which violation occurred within the ten-
226 year period immediately preceding the date of arrest in the
227 current proceeding.

228 ~~(h)~~ (o) A person may be charged in a warrant or indict-
229 ment or information for a second or subsequent offense
230 under this section if the person has been previously arrested
231 for or charged with a violation of this section which is
232 alleged to have occurred within the applicable time period
233 for prior offenses, notwithstanding the fact that there has not
234 been a final adjudication of the charges for the alleged
235 previous offense. In that case, the warrant or indictment or
236 information must set forth the date, location and particulars
237 of the previous offense or offenses. No person may be
238 convicted of a second or subsequent offense under this
239 section unless the conviction for the previous offense has

240 become final, or the person has previously had a period of
241 conditional probation imposed pursuant to section two-b of
242 this article.

243 ~~(g)~~ (p) The fact that any person charged with a violation
244 of subsection (a), (b), (c), (d), (e), (f) or ~~(f)~~ (g) of this section,
245 or any person permitted to drive as described under subsec-
246 tion ~~(g)~~ (h) or ~~(h)~~ (i) of this section, is or has been legally
247 entitled to use alcohol, a controlled substance or a drug does
248 not constitute a defense against any charge of violating
249 subsection (a), (b), (c), (d), (e), (f), (g), (h) or ~~(h)~~ (i) of this
250 section.

251 ~~(p)~~ (q) For purposes of this section, the term “controlled
252 substance” has the meaning ascribed to it in chapter sixty-a
253 of this code.

254 ~~(q)~~ (r) The sentences provided in this section upon
255 conviction for a violation of this article are mandatory and
256 are not subject to suspension or probation: *Provided*, That
257 the court may apply the provisions of article eleven-a,
258 chapter sixty-two of this code to a person sentenced or
259 committed to a term of one year or less for a first offense
260 under this section: *Provided, however*, That the court may
261 impose a term of conditional probation pursuant to section

262 two-b of this article to persons adjudicated thereunder. An
263 order for home detention by the court pursuant to the
264 provisions of article eleven-b of said chapter may be used as
265 an alternative sentence to any period of incarceration
266 required by this section for a first or subsequent offense:
267 *Provided further*, That for any period of home incarceration
268 ordered for a person convicted of second offense under this
269 section, electronic monitoring shall be required for no fewer
270 than five days of the total period of home confinement
271 ordered and the offender may not leave home for those five
272 days notwithstanding the provisions of section five, article
273 eleven-b, chapter sixty-two of this code: *And provided*
274 *further*, That for any period of home incarceration ordered
275 for a person convicted of a third or subsequent violation of
276 this section, electronic monitoring shall be included for no
277 fewer than ten days of the total period of home confinement
278 ordered and the offender may not leave home for those ten
279 days notwithstanding section five, article eleven-b, chapter
280 sixty-two of this code.