

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4617

BY DELEGATES SHOTT AND HANSHAW

[Introduced February 13, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, clarifying
2 that driving under the influence of alcohol, controlled substances, or drugs must be for
3 circumstances where the operator is upon a public highway, or is on a private road either
4 before or after entering or exiting a public highway.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) *Definitions-*

2 (1) "Impaired State" means a person:

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 or inhalant substance;

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

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

10 (2) "Bodily Injury" means injury that causes substantial physical pain, illness or any
11 impairment of physical condition.

12 (3) "Serious Bodily Injury" means bodily injury that creates a substantial risk of death, that
13 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or
14 impairment of the function of any bodily organ.

15 (b) Any person who drives a vehicle on any public highway or private road in this state
16 while he or she is in an impaired state and such impaired state proximately causes the death of
17 any person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
18 correctional facility for not less than three nor more than 15 years and shall be fined not less than

19 \$1,000 nor more than \$3,000: *Provided*, That any death charged under this subsection must occur
20 within one year of the offense.

21 (c) Any person who drives a vehicle on any public highway or private road in this state
22 while he or she is in an impaired state and such impaired state proximately causes serious bodily
23 injury to any person other than himself or herself, is guilty of a felony and, upon conviction thereof,
24 shall be imprisoned in a state correctional facility for not less than two nor more than 10 years
25 and shall be fined not less than \$1,000 nor more than \$3,000.

26 (d) Any person who drives a vehicle on any public highway or private road in this state
27 while he or she is in an impaired state and such impaired state proximately causes a bodily injury
28 to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction
29 thereof, shall be confined in jail for not less than one day more than one year and shall be fined
30 not less than \$200 nor more than \$1,000: *Provided*, That such jail term shall include actual
31 confinement of not less than 24 hours: *Provided, however*, That a person sentenced pursuant to
32 this subsection shall receive credit for any period of actual confinement he or she served upon
33 arrest for the subject offense.

34 (e) Any person who drives a vehicle on any public highway or private road in this state: (i)
35 while he or she is in an impaired state or (ii) while he or she is in an impaired state but has an
36 alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight,
37 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six
38 months and shall be fined not less than \$100 nor more than \$500: *Provided*, That a person
39 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
40 or she served upon arrest for the subject offense.

41 (f) Any person who drives a vehicle on any public highway or private road in this state
42 while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one
43 percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be
44 confined in jail for not less than two days nor more than six months, which jail term is to include

45 actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than
46 \$1,000. A person sentenced pursuant to this subdivision shall receive credit for any period of
47 actual confinement he or she served upon arrest for the subject offense.

48 (g) Any person who, being a habitual user of narcotic drugs or amphetamine or any
49 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of
50 a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day
51 nor more than six months, which jail term is to include actual confinement of not less than 24
52 hours, and shall be fined not less than \$100 nor more than \$500. A person sentenced pursuant
53 to this subdivision shall receive credit for any period of actual confinement he or she served upon
54 arrest for the subject offense.

55 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway
56 or private road in this state by any other person who is in an impaired state is guilty of a
57 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months
58 and shall be fined not less than \$100 nor more than \$500.

59 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway
60 or private road in this state by any other person who is a habitual user of narcotic drugs or
61 amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof,
62 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor
63 more than \$500.

64 (j) Any person under the age of 21 years who drives a vehicle on any public highway or
65 private road in this state while he or she has an alcohol concentration in his or her blood of two
66 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by
67 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction
68 thereof, shall be fined not less than \$25 nor more than \$100. For a second or subsequent offense
69 under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall
70 be confined in jail for 24 hours and shall be fined not less than \$100 nor more than \$500. A person

71 who is charged with a first offense under the provisions of this subsection may move for a
72 continuance of the proceedings, from time to time, to allow the person to participate in the Motor
73 Vehicle Alcohol Test and Lock Program as provided in §17C-5a-3a of this code. Upon successful
74 completion of the program, the court shall dismiss the charge against the person and expunge
75 the person's record as it relates to the alleged offense. In the event the person fails to successfully
76 complete the program, the court shall proceed to an adjudication of the alleged offense. A motion
77 for a continuance under this subsection may not be construed as an admission or be used as
78 evidence.

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

82 (k) Any person who drives a vehicle on any public highway or private road in this state
83 while he or she is in an impaired state and has within the vehicle one or more other persons who
84 are unemancipated minors who have not yet reached their sixteenth birthday is guilty of a
85 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
86 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000: *Provided, That*
87 such jail term shall include actual confinement of not less than 48 hours: *Provided, however, That*
88 a person sentenced pursuant to this subdivision shall receive credit for any period of actual
89 confinement he or she served upon arrest for the subject offense.

90 (l) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section,
91 for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof,
92 shall be confined in jail for not less than six months nor more than one year and the court may, in
93 its discretion, impose a fine of not less than \$1,000 nor more than \$3,000.

94 (m) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section,
95 for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction
96 thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five

97 years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than
98 \$5,000.

99 (n) For purposes of subsections (l) and (m) of this section relating to second, third and
100 subsequent offenses, the following events shall be regarded as offenses under this section:

101 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g) or (h) of this
102 section or under a prior enactment of this section for an offense which occurred within the 10-year
103 period immediately preceding the date of arrest in the current proceeding;

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

108 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for
109 violation of subsection (e) of this section, which violation occurred within the 10-year period
110 immediately preceding the date of arrest in the current proceeding.

111 (o) A person may be charged in a warrant or indictment or information for a second or
112 subsequent offense under this section if the person has been previously arrested for or charged
113 with a violation of this section which is alleged to have occurred within the applicable time period
114 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the
115 charges for the alleged previous offense. In that case, the warrant or indictment or information
116 must set forth the date, location and particulars of the previous offense or offenses. No person
117 may be convicted of a second or subsequent offense under this section unless the conviction for
118 the previous offense has become final, or the person has previously had a period of conditional
119 probation imposed pursuant to §17C-5-2b of this article.

120 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f) or
121 (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this
122 section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not

123 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i)
124 of this section.

125 (q) For purposes of this section, the term “controlled substance” has the meaning ascribed
126 to it in chapter sixty-a of this code.

127 (r) The sentences provided in this section upon conviction for a violation of this article are
128 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
129 the provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of
130 one year or less for a first offense under this section: *Provided, however*, That the court may
131 impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated
132 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et*
133 *seq.* article eleven-b of said chapter may be used as an alternative sentence to any period of
134 incarceration required by this section for a first or subsequent offense: *Provided, further*, That for
135 any period of home incarceration ordered for a person convicted of second offense under this
136 section, electronic monitoring shall be required for no fewer than five days of the total period of
137 home confinement ordered and the offender may not leave home for those five days
138 notwithstanding the provisions of §62-11B-5 of this code: *And provided further*, That for any period
139 of home incarceration ordered for a person convicted of a third or subsequent violation of this
140 section, electronic monitoring shall be included for no fewer than 10 days of the total period of
141 home confinement ordered and the offender may not leave home for those 10 days
142 notwithstanding §62-11B-5 of this code.

143 (s) For purposes of this section, the words “private road” do not include private roads in
144 any circumstances where the operator or driver is operating the vehicle on his or her own property
145 and has not left, or does not intend to leave, said property to drive upon any public highway.

NOTE: The purpose of this bill is to make clear that a charge of DUI may only be brought against an individual operating a vehicle on public highways or on private roads before or after entering or exiting a public highway.

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