

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2183

BY DELEGATES SHOTT, STEELE, HARSHBARGER AND WILSON

[Passed March 5, 2019; in effect ninety days from passage.]

1 AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating
2 to driving a vehicle under the influence of alcohol, controlled substances, drugs, or a
3 combination thereof; and clarifying that certain misdemeanor offenses of driving under the
4 influence do not encompass or include operating a vehicle solely and exclusively on one's
5 own property.

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 in this state while he or she is in an impaired state
16 and such impaired state proximately causes the death of any person is guilty of a felony and,
17 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three

18 nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000: *Provided,*
19 That any death charged under this subsection must occur within one year of the offense.

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

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

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

39 (f) Any person who drives a vehicle in this state while he or she has an alcohol
40 concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty
41 of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days
42 nor more than six months, which jail term is to include actual confinement of not less than 24
43 hours, and shall be fined not less than \$200 nor more than \$1,000. A person sentenced pursuant

44 to this subdivision shall receive credit for any period of actual confinement he or she served upon
45 arrest for the subject offense.

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

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

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

60 (j) Any person under the age of 21 years who drives a vehicle in this state while he or she
61 has an alcohol concentration in his or her blood of two hundredths of one percent or more, by
62 weight, but less than eight hundredths of one percent, by weight, for a first offense under this
63 subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than
64 \$25 nor more than \$100. For a second or subsequent offense under this subsection, the person
65 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for 24 hours and
66 shall be fined not less than \$100 nor more than \$500. A person who is charged with a first offense
67 under the provisions of this subsection may move for a continuance of the proceedings, from time
68 to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as
69 provided in §17C-5A-3a of this code. Upon successful completion of the program, the court shall

70 dismiss the charge against the person and expunge the person's record as it relates to the alleged
71 offense. In the event the person fails to successfully complete the program, the court shall proceed
72 to an adjudication of the alleged offense. A motion for a continuance under this subsection may
73 not be construed as an admission or be used as evidence.

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

77 (k) Any person who drives a vehicle in this state while he or she is in an impaired state
78 and has within the vehicle one or more other persons who are unemancipated minors who have
79 not yet reached their 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall
80 be confined in jail for not less than two days nor more than 12 months, and shall be fined not less
81 than \$200 nor more than \$1,000: *Provided*, That such jail term shall include actual confinement
82 of not less than 48 hours: *Provided, however*, That a person sentenced pursuant to this
83 subdivision shall receive credit for any period of actual confinement he or she served upon arrest
84 for the subject offense.

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

89 (m) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section,
90 for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction
91 thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five
92 years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than
93 \$5,000.

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

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

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

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

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

115 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f) or
116 (g) of this section, or any person permitted to drive as described under subsection(h) or (i) of this
117 section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not
118 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i)
119 of this section.

120 (q) For purposes of this section, the term “controlled substance” has the meaning ascribed
121 to it in §60A-1-101 *et seq.* of this code.

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

137 (s) As used in subsections (e), (f), (g), (h), (i), and (j) of this section, the words “drives a
138 vehicle in this state” do not mean or include driving or operating a vehicle solely and exclusively
139 on one’s own property.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor