

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4469

**FISCAL
NOTE**

BY DELEGATE FOSTER

[Introduced January 22, 2020; 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, relating
 2 to increasing the minimum criminal penalty for a driver who, in an impaired state, causes
 3 the death of a minor.

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

12 "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 *Provided, however, That when the death is that of a minor, the driver, upon conviction, shall be*

21 imprisoned in a state correctional facility for not less than five nor more than 15 years and may
22 not be eligible for parole until the driver has served a minimum of five years.

23 (c) Any person who drives a vehicle in this state while he or she is in an impaired state
24 and such impaired state proximately causes serious bodily injury to any person other than himself
25 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
26 correctional facility for not less than two nor more than 10 years and shall be fined not less than
27 \$1,000 nor more than \$3,000.

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

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

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

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

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

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

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

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

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

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

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

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

92 (m) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section,
93 for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction
94 thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five
95 years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than
96 \$5,000.

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to increase the minimum, criminal penalty for a driver who, in an impaired state, causes the death of a minor. The penalty is a minimum of 5 years, with the addition that the driver must serve a minimum of five years before being eligible for parole.

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