

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Originating**

## **House Bill 4664**

BY DELEGATES SHOTT, KELLY, CANESTRARO, MILLER,

N. BROWN, QUEEN, WESTFALL

[Originating in the Committee on the Judiciary;

Reported on February 4, 2020.]



1 A BILL to amend and reenact §17C-5-2 and §17C-5-2a of the Code of West Virginia, 1931, as  
2 amended, clarifying that the offense of driving under the influence of alcohol, controlled  
3 substances, or drugs must, in instances not causing bodily injury or death, be for  
4 circumstances where the operator is upon a public highway, or is on a private road; and  
5 clarifying the definition of “in this state” for purposes of enforcement of these measures.

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

## **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

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

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

43 actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than  
44 \$1,000. A person sentenced pursuant to this subdivision shall receive credit for any period of  
45 actual confinement he or she served upon 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 on any public highway or private road in this state is guilty of  
48 a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day  
49 nor more than six months, which jail term is to include actual confinement of not less than 24  
50 hours, and shall be fined not less than \$100 nor more than \$500. A person sentenced pursuant  
51 to this subdivision shall receive credit for any period of actual confinement he or she served upon  
52 arrest for the subject offense.

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

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

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

69 who is charged with a first offense under the provisions of this subsection may move for a  
70 continuance of the proceedings, from time to time, to allow the person to participate in the Motor  
71 Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this code. Upon successful  
72 completion of the program, the court shall dismiss the charge against the person and expunge  
73 the person's record as it relates to the alleged offense. In the event the person fails to successfully  
74 complete the program, the court shall proceed to an adjudication of the alleged offense. A motion  
75 for a continuance under this subsection may not be construed as an admission or be used as  
76 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 on any public highway or private road in this state  
81 while he or she is in an impaired state and has within the vehicle one or more other persons who  
82 are unemancipated minors who have not yet reached their 16th birthday is guilty of a  
83 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor  
84 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000: *Provided, That*  
85 such jail term shall include actual confinement of not less than 48 hours: *Provided, however, That*  
86 a person sentenced pursuant to this subdivision shall receive credit for any period of actual  
87 confinement he or she served upon arrest 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.~~

**§17C-5-2a. Definition of phrase “in this state”; phrases synonymous with driving under the  
influence of alcohol; validation of warrants and indictments.**

1 (a) For purposes of this article and article five-a of this chapter, the phrase “in this state”  
2 shall mean anywhere within the physical boundaries of this state, including, but not limited to,



3 publicly maintained streets and highways, and subdivision streets or other areas not publicly  
4 maintained but nonetheless open to the use of the public for purposes of vehicular travel, but as  
5 used in subsections (e), (f), (g), (h), (i), and (j) of §17C-5-2a does not mean or include driving or  
6 operating a vehicle solely and exclusively on one's own property in an area not open to the use  
7 of the public for purposes of vehicular travel.

8 (b) When used in this code, the terms or phrases “driving under the influence of  
9 intoxicating liquor,” “driving or operating a motor vehicle while intoxicated,” “for any person who  
10 is under the influence of intoxicating liquor to drive any vehicle,” or any similar term or phrase  
11 shall be construed to mean and be synonymous with the term or phrase “while under the influence  
12 of alcohol ... drives a vehicle” as the latter term or phrase is used in section two of this article.

13 (c) From and after the effective date of this section a warrant or indictment which charges  
14 or alleges an offense, prohibited by the provisions of section two of this article, and which warrant  
15 or indictment uses any of the terms or phrases set forth in subsection (b) of this section, shall not  
16 thereby be fatally defective if such warrant or indictment otherwise informs the person so accused  
17 of the charges against him or her.

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, except in instances involving bodily injury or death.

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