

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2335

**FISCAL
NOTE**

BY DELEGATES FOSTER AND KESSINGER

[Introduced February 12, 2021; 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 (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) “Controlled substance” has the meaning provided in §60A-1-101 of this code.

13 (4) “Serious bodily injury” means bodily injury that creates a substantial risk of death, that
 14 causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or
 15 impairment of the function of any bodily organ.

16 (5) “Test and lock program” means the Motor Vehicle Test and Lock Program, established
 17 in §17C-5A-3a and administered by the Division of Motor Vehicles.

18 (b) Any person who drives a vehicle in this state while he or she is in an impaired state,
 19 and such impaired state proximately causes the death of any person, is guilty of a felony and,
 20 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three

21 nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall
22 have his or her license to operate a motor vehicle revoked by the Commissioner of the Division
23 of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in
24 the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That any death
25 charged under this subsection must occur within one year of the offense: *Provided, however*, That
26 if the person has previously been convicted under this section, the person shall have his or her
27 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
28 for life or for a period of time conditioned on participation in the test and lock program in
29 accordance with §17C-5A-3a of this code: *Provided further*, That when the death is that of a minor,
30 the driver, upon conviction, shall be imprisoned in a state correctional facility for not less than five
31 nor more than 15 years and may not be eligible for parole until the driver has served a minimum
32 of five years.

33 (c) Any person who drives a vehicle in this state while he or she is in an impaired state,
34 and such impaired state proximately causes serious bodily injury to any person other than himself
35 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
36 correctional facility for not less than two nor more than 10 years and shall be fined not less than
37 \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked
38 by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of
39 time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of
40 this code: *Provided*, That if the person has previously been convicted under this section, the
41 person shall have his or her license to operate a motor vehicle revoked by the Commissioner of
42 the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test
43 and lock program in accordance with §17C-5A-3a of this code.

44 (d) Any person who drives a vehicle in this state while he or she is in an impaired state,
45 and such impaired state proximately causes a bodily injury to any person other than himself or
46 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not

47 less than one day nor more than one year and shall be fined not less than \$200 nor more than
48 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
49 of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on
50 participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided,*
51 That if the person has previously been convicted under this section, the person shall have his or
52 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
53 Vehicles for life or for a period of time conditioned on participation in the test and lock program in
54 accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall
55 include actual confinement of not less than 24 hours: *Provided, however,* That a person
56 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
57 or she served upon arrest for the subject offense.

58 (e) Any person who drives a vehicle on any public highway or private road in this state:
59 (1) while he or she is in an impaired state; or (2) while he or she is in an impaired state but has
60 an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by
61 weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to
62 six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her
63 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
64 for a period of six months or for a period of time conditioned on participation in the test and lock
65 program in accordance with §17C-5A-3a of this code: *Provided,* That a person sentenced
66 pursuant to this subsection shall receive credit for any period of actual confinement he or she
67 served upon arrest for the subject offense.

68 (f) Any person who drives a vehicle on any public highway or private road in this state
69 while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one
70 percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be
71 confined in jail for not less than two days nor more than six months, which jail term is to include
72 actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than

73 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
74 of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on
75 participation in the test and lock program in accordance with §17C-5A-3a of this code. A person
76 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
77 or she served upon arrest for the subject offense.

78 (g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any
79 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of
80 a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day
81 nor more than six months, which jail term is to include actual confinement of not less than 24
82 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license
83 to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
84 period of six months. A person sentenced pursuant to this subsection shall receive credit for any
85 period of actual confinement he or she served upon arrest for the subject offense.

86 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway
87 or private road in this state by any other person who is in an impaired state is guilty of a
88 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months
89 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to
90 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
91 period of six months or for a period of time conditioned on participation in the test and lock
92 program in accordance with §17C-5A-3a of this code.

93 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway
94 or private road in this state by any other person who is a habitual user of narcotic drugs or
95 amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof,
96 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor
97 more than \$500, and shall have his or her license to operate a motor vehicle revoked by the
98 Commissioner of the Division of Motor Vehicles for a period of six months.

99 (j) (1) Any person under the age of 21 years who drives a vehicle on any public highway
100 or private road in this state while he or she has an alcohol concentration in his or her blood of two
101 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by
102 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction
103 thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate
104 a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of
105 60 days or for a period of time conditioned on participation in the test and lock program in
106 accordance with §17C-5A-3a of this code. For a second or subsequent offense under this
107 subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined
108 in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his
109 or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
110 Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer,
111 or for a period of time conditioned on participation in the test and lock program in accordance with
112 §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this
113 subsection may move for a continuance of the proceedings, from time to time, to allow the person
114 to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon
115 successful completion of the program, the court shall dismiss the charge against the person and
116 expunge the person's record as it relates to the alleged offense. In the event the person fails to
117 successfully complete the program, the court shall proceed to an adjudication of the alleged
118 offense. A motion for a continuance under this subsection may not be construed as an admission
119 or be used as evidence.

120 (2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her
121 license to operate a motor vehicle suspended or revoked for a minimum period of one year or for
122 a period of time conditioned on participation in the test and lock program in accordance with
123 §17C-5A-3a of this code, if the person:

124 (i) Has previously been convicted under this subsection and is subsequently convicted of

125 an offense under another subsection of this section; or

126 (ii) Is convicted under this subsection and has previously been convicted of an offense
127 under another subsection of this section.

128 (B) Nothing in this subdivision permits a shorter period of license revocation, license
129 suspension, or participation in the test and lock program than is mandatory for the specific offense
130 for which the person is convicted.

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

134 (k) Any person who drives a vehicle on any public highway or private road in this state
135 while he or she is in an impaired state and has within the vehicle one or more other persons who
136 are unemancipated minors who have not yet reached their 16th birthday is guilty of a
137 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
138 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have
139 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
140 Vehicles for a period of one year or for a period of time conditioned on participation in the test and
141 lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall
142 include actual confinement of not less than 48 hours: *Provided, however*, That a person
143 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
144 or she served upon arrest for the subject offense.

145 (l) A person convicted of an offense under this section, who has previously been convicted
146 of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction
147 thereof, shall be confined in jail for not less than six months nor more than one year, may be fined
148 not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor
149 vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period
150 of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a

151 of this code: *Provided*, That if the second conviction is for an offense as described in subsections
152 (b), (c), or (d) of this section and the subsection creating the offense requires a period of
153 incarceration, period of license revocation, or fine that is greater than what is required for a
154 conviction under this subsection, the greater period of incarceration, period of revocation, or fine
155 shall be imposed: *Provided, however*, That this section does not apply to a second conviction that
156 is subject to a period of license revocation under subsection (j) of this section.

157 (m) A person convicted of an offense under this section, who has previously been
158 convicted of any offense under this section on two or more occasions, is guilty of a felony and,
159 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two
160 nor more than five years, shall have his or her license to operate a motor vehicle revoked by the
161 Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on
162 participation in the test and lock program in accordance with §17C-5A-3a of this code, and the
163 court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided*,
164 That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or
165 (d) of this section and the subsection creating the offense requires a period of incarceration, period
166 of license revocation, or fine that is greater than what is required for a conviction under this
167 subsection, the greater period of incarceration, period of revocation, and fine shall be imposed:
168 *Provided, however*, That this section does not apply to a third or subsequent conviction that is
169 subject to a period of license revocation under subsection (j) of this section.

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

173 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of
174 this section, or under a prior enactment of this section, for an offense which occurred within the
175 10-year period immediately preceding the date of arrest in the current proceeding;

176 (2) Any conviction under a municipal ordinance of this state or any other state or a statute

177 of the United States or of any other state of an offense which has the same elements as an offense
178 described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred
179 within the 10-year period immediately preceding the date of arrest in the current proceeding; and

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

183 (o) A person may be charged in a warrant, indictment, or information for a second or
184 subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has
185 been previously arrested for, or charged with, a violation of this section which is alleged to have
186 occurred within the applicable time period for prior offenses, notwithstanding the fact that there
187 has not been a final adjudication of the charges for the alleged previous offense. In that case, the
188 warrant or indictment or information must set forth the date, location, and particulars of the
189 previous offense or offenses. No person may be convicted of a second or subsequent offense
190 under this section unless the conviction for the previous offense has become final, or the person
191 has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

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

197 (q) The sentences provided in this section upon conviction for a violation of this article are
198 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
199 the provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of
200 one year or less for a first offense under this section: *Provided, however*, That the court may
201 impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated
202 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et*

203 *seq.* of this code may be used as an alternative sentence to any period of incarceration required
204 by this section for a first or subsequent offense: *Provided further*, That for any period of home
205 incarceration ordered for a person convicted of a second offense under this section, electronic
206 monitoring shall be required for no fewer than five days of the total period of home confinement
207 ordered and the offender may not leave home for those five days notwithstanding the provisions
208 of §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered
209 for a person convicted of a third or subsequent violation of this section, electronic monitoring shall
210 be included for no fewer than 10 days of the total period of home confinement ordered and the
211 offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

212 (r) A person whose license to operate a motor vehicle has been revoked or suspended
213 by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a
214 comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or
215 her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

216 (s) For any offense for which an alternative revocation period is permitted conditioned
217 upon participation in the test and lock program, an alternative sentence may not be imposed
218 without the consent of the driver.

219 (t) Upon entering the order of conviction for an offense under this section, or the imposition
220 of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall
221 immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

222 (u) The amendments made to this section during the 2020 regular session of the
223 Legislature shall become effective on July 1, 2020.

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.