

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2922**

4 (By Delegates White, Miley, Kominar, Boggs and Perdue)

5 (Originating in the Committee on the Judiciary)

6 [February 8, 2011]

7

8 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,  
9 1931, as amended, relating to establishing the felony offense  
10 of causing serious bodily injury to another person by a person  
11 who is driving under the influence of alcohol, controlled  
12 substances or other drugs, or any combination thereof, or  
13 driving while having an alcoholic concentration in his or her  
14 blood of two hundredths of one percent or more, by weight, at  
15 a time when his or her privilege to drive has been lawfully  
16 suspended or revoked for driving under the influence of  
17 alcohol, controlled substances or other drugs, or any  
18 combination thereof, or for refusing to take a secondary  
19 chemical test of blood alcohol content, or at a time when he  
20 or she is participating in the Motor Vehicle Alcohol Test And  
21 Lock Program; and providing criminal penalties.

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

23 That §17C-5-2 of the Code of West Virginia, 1931, as amended,  
24 be amended and reenacted to read as follows:

25 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

1 **§17C-5-2. Driving under influence of alcohol, controlled substances**  
2 **or drugs; penalties.**

3 (a) Any person who:

4 (1) Drives a vehicle in this state while he or she:

5 (A) Is under the influence of alcohol;

6 (B) Is under the influence of any controlled substance;

7 (C) Is under the influence of any other drug;

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

10 (E) Has an alcohol concentration in his or her blood of eight  
11 hundredths of one percent or more, by weight; and

12 (2) While driving does any act forbidden by law or fails to  
13 perform any duty imposed by law in the driving of the vehicle,  
14 which act or failure proximately causes the death of any person  
15 within one year next following the act or failure; and

16 (3) Commits the act or failure in reckless disregard of the  
17 safety of others and when the influence of alcohol, controlled  
18 substances or drugs is shown to be a contributing cause to the  
19 death, is guilty of a felony and, upon conviction thereof, shall be  
20 imprisoned in a state correctional facility for not less than two  
21 years nor more than ten years and shall be fined not less than  
22 \$1,000 nor more than \$3,000.

23 (b) Any person who:

24 (1) Drives a vehicle in this state while he or she:

25 (A) Is under the influence of alcohol;

26 (B) Is under the influence of any controlled substance;

1 (C) Is under the influence of any other drug;

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

4 (E) Has an alcohol concentration in his or her blood of eight  
5 hundredths of one percent or more, by weight; and

6 (2) While driving does any act forbidden by law or fails to  
7 perform any duty imposed by law in the driving of the vehicle,  
8 which act or failure proximately causes the death of any person  
9 within one year next following the act or failure, is guilty of a  
10 misdemeanor and, upon conviction thereof, shall be confined in jail  
11 for not less than ninety days nor more than one year and shall be  
12 fined not less than \$500 nor more than \$1,000.

13 (c) Any person who:

14 (1) Drives a vehicle in this state while he or she:

15 (A) Is under the influence of alcohol;

16 (B) Is under the influence of any controlled substance;

17 (C) Is under the influence of any other drug;

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

20 (E) Has an alcohol concentration in his or her blood of eight  
21 hundredths of one percent or more, by weight; and

22 (2) While driving does any act forbidden by law or fails to  
23 perform any duty imposed by law in the driving of the vehicle,  
24 which act or failure proximately causes bodily injury to any person  
25 other than himself or herself, is guilty of a misdemeanor and, upon  
26 conviction thereof, shall be confined in jail for not less than one

1 day nor more than one year, which jail term is to include actual  
2 confinement of not less than twenty-four hours, and shall be fined  
3 not less than \$200 nor more than \$1,000; or

4 (3) (A) While driving does any act forbidden by law or fails  
5 to perform any duty imposed by law in the driving of the vehicle,  
6 which act or failure proximately causes serious bodily injury to  
7 any person other than himself or herself at a time when the  
8 privilege to drive of the person driving has been lawfully  
9 suspended or revoked: (i) for driving under the influence of  
10 alcohol, controlled substances or other drugs, or any combination  
11 thereof, Provided, That this subparagraph does not include a  
12 suspension or revocation resulting from a violation of subsection  
13 (i) of this section, or (ii) for refusing to take a secondary  
14 chemical test of blood alcohol content under any provision of this  
15 article or under a municipal ordinance of this state or any other  
16 state or under a statute of the United States or of any other state  
17 which has the same requirements for the suspension or revocation of  
18 the privilege to drive, or (iii) at a time when the person driving  
19 is participating in the Motor Vehicle Alcohol Test And Lock Program  
20 pursuant to section two-b of this article, is guilty of a felony  
21 and, upon conviction thereof, shall be imprisoned in a state  
22 correctional facility for not less than one year nor more than  
23 three years and shall be fined not less than \$1,000 nor more than  
24 \$3,000;

25 (B) Notwithstanding any provision of subsection (l) or (m) of  
26 this section to the contrary, a person violating any provision of

1 subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this  
2 section, for any subsequent offense under this subdivision, is  
3 guilty of a felony and, upon conviction thereof, shall be  
4 imprisoned in a state correctional facility for not less than two  
5 years nor more than ten years and the court may, in its discretion,  
6 impose a fine of not less than \$3,000 nor more than \$5,000.

7 (C) For purposes of this subdivision, "serious bodily injury"  
8 means bodily injury which creates a substantial risk of death,  
9 which causes serious or prolonged disfigurement, prolonged  
10 impairment of health or prolonged loss or impairment of the  
11 function of any bodily organ.

12 (d) Any person who:

13 (1) Drives a vehicle in this state while he or she:

14 (A) Is under the influence of alcohol;

15 (B) Is under the influence of any controlled substance;

16 (C) Is under the influence of any other drug;

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

19 (E) Has an alcohol concentration in his or her blood of eight  
20 hundredths of one percent or more, by weight, but less than fifteen  
21 hundredths of one percent, by weight;

22 (2) Is guilty of a misdemeanor and, upon conviction thereof,  
23 except as provided in section two-b of this article, shall be  
24 confined in jail for up to six months and shall be fined not less  
25 than \$100 nor more than \$500. A person sentenced pursuant to this  
26 subdivision shall receive credit for any period of actual

1 confinement he or she served upon arrest for the subject offense.

2 (e) Any person who drives a vehicle in this state while he or  
3 she has an alcohol concentration in his or her blood of fifteen  
4 hundredths of one percent or more, by weight, is guilty of a  
5 misdemeanor and, upon conviction thereof, shall be confined in jail  
6 for not less than two days nor more than six months, which jail  
7 term is to include actual confinement of not less than twenty-four  
8 hours, and shall be fined not less than \$200 nor more than \$1,000.

9 A person sentenced pursuant to this subdivision shall receive  
10 credit for any period of actual confinement he or she served upon  
11 arrest for the subject offense.

12 (f) Any person who, being an habitual user of narcotic drugs  
13 or amphetamine or any derivative thereof, drives a vehicle in this  
14 state is guilty of a misdemeanor and, upon conviction thereof,  
15 shall be confined in jail for not less than one day nor more than  
16 six months, which jail term is to include actual confinement of not  
17 less than twenty-four hours, and shall be fined not less than \$100  
18 nor more than \$500. A person sentenced pursuant to this  
19 subdivision shall receive credit for any period of actual  
20 confinement he or she served upon arrest for the subject offense.

21 (g) Any person who:

22 (1) Knowingly permits his or her vehicle to be driven in this  
23 state by any other person who:

24 (A) Is under the influence of alcohol;

25 (B) Is under the influence of any controlled substance;

26 (C) Is under the influence of any other drug;

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

3 (E) Has an alcohol concentration in his or her blood of eight  
4 hundredths of one percent or more, by weight;

5 (2) Is guilty of a misdemeanor and, upon conviction thereof,  
6 shall be confined in jail for not more than six months and shall be  
7 fined not less than \$100 nor more than \$500.

8 (h) Any person who knowingly permits his or her vehicle to be  
9 driven in this state by any other person who is an habitual user of  
10 narcotic drugs or amphetamine or any derivative thereof is guilty  
11 of a misdemeanor and, upon conviction thereof, shall be confined in  
12 jail for not more than six months and shall be fined not less than  
13 \$100 nor more than \$500.

14 (i) Any person under the age of twenty-one years who drives a  
15 vehicle in this state while he or she has an alcohol concentration  
16 in his or her blood of two hundredths of one percent or more, by  
17 weight, but less than eight hundredths of one percent, by weight,  
18 for a first offense under this subsection is guilty of a  
19 misdemeanor and, upon conviction thereof, shall be fined not less  
20 than \$25 nor more than \$100. For a second or subsequent offense  
21 under this subsection, the person is guilty of a misdemeanor and,  
22 upon conviction thereof, shall be confined in jail for twenty-four  
23 hours and shall be fined not less than \$100 nor more than \$500. A  
24 person who is charged with a first offense under the provisions of  
25 this subsection may move for a continuance of the proceedings, from  
26 time to time, to allow the person to participate in the Motor

1 Vehicle Alcohol Test and Lock Program as provided in section three-  
2 a, article five-a of this chapter. Upon successful completion of  
3 the program, the court shall dismiss the charge against the person  
4 and expunge the person's record as it relates to the alleged  
5 offense. In the event the person fails to successfully complete  
6 the program, the court shall proceed to an adjudication of the  
7 alleged offense. A motion for a continuance under this subsection  
8 may not be construed as an admission or be used as evidence. A  
9 person arrested and charged with an offense under the provisions of  
10 this subsection or subsection (a), (b), (c), (d), (e), (f), (g) or  
11 (h) of this section may not also be charged with an offense under  
12 this subsection arising out of the same transaction or occurrence.

13 (j) Any person who:

14 (1) Drives a vehicle in this state while he or she:

15 (A) Is under the influence of alcohol;

16 (B) Is under the influence of any controlled substance;

17 (C) Is under the influence of any other drug;

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

20 (E) Has an alcohol concentration in his or her blood of eight  
21 hundredths of one percent or more, by weight; and

22 (2) The person while driving has on or within the motor  
23 vehicle one or more other persons who are unemancipated minors who  
24 have not reached their sixteenth birthday is guilty of a  
25 misdemeanor and, upon conviction thereof, shall be confined in jail  
26 for not less than two days nor more than twelve months, which jail

1 term is to include actual confinement of not less than forty-eight  
2 hours and shall be fined not less than \$200 nor more than \$1,000.

3 (k) A person violating any provision of subsection (b), (c),  
4 (d), (e), (f), (g) or (i) of this section, for the second offense  
5 under this section, is guilty of a misdemeanor and, upon conviction  
6 thereof, shall be confined in jail for not less than six months nor  
7 more than one year and the court may, in its discretion, impose a  
8 fine of not less than \$1,000 nor more than \$3,000.

9 (l) A person violating any provision of subsection (b), (c),  
10 (d), (e), (f), (g) or (i) of this section, for the third or any  
11 subsequent offense under this section, is guilty of a felony and,  
12 upon conviction thereof, shall be imprisoned in a state  
13 correctional facility for not less than one nor more than three  
14 years and the court may, in its discretion, impose a fine of not  
15 less than \$3,000 nor more than \$5,000.

16 (m) For purposes of subsections (k) and (l) of this section  
17 relating to second, third and subsequent offenses, the following  
18 events shall be regarded as offenses under this section:

19 (1) Any conviction under the provisions of subsection (a),  
20 (b), (c), (d), (e), (f) or (g) of this section or under a prior  
21 enactment of this section for an offense which occurred within the  
22 ten-year period immediately preceding the date of arrest in the  
23 current proceeding;

24 (2) Any conviction under a municipal ordinance of this state  
25 or any other state or a statute of the United States or of any  
26 other state of an offense which has the same elements as an offense

1 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of  
2 this section, which offense occurred within the ten-year period  
3 immediately preceding the date of arrest in the current proceeding;  
4 and,

5 (3) Any period of conditional probation imposed pursuant  
6 section two-b of this article for violation of subsection (d) of  
7 this article, which violation occurred within the ten-year period  
8 immediately preceding the date of arrest in the current proceeding.

9 (n) A person may be charged in a warrant or indictment or  
10 information for a second or subsequent offense under this section  
11 if the person has been previously arrested for or charged with a  
12 violation of this section which is alleged to have occurred within  
13 the applicable time period for prior offenses, notwithstanding the  
14 fact that there has not been a final adjudication of the charges  
15 for the alleged previous offense. In that case, the warrant or  
16 indictment or information must set forth the date, location and  
17 particulars of the previous offense or offenses. No person may be  
18 convicted of a second or subsequent offense under this section  
19 unless the conviction for the previous offense has become final, or  
20 the person has previously had a period of conditional probation  
21 imposed pursuant to section two-b of this article.

22 (o) The fact that any person charged with a violation of  
23 subsection (a), (b), (c), (d), (e) or (f) of this section, or any  
24 person permitted to drive as described under subsection (g) or (h)  
25 of this section, is or has been legally entitled to use alcohol, a  
26 controlled substance or a drug does not constitute a defense

1 against any charge of violating subsection (a), (b), (c), (d), (e),  
2 (f), (g) or (h) of this section.

3 (p) For purposes of this section, the term "controlled  
4 substance" has the meaning ascribed to it in chapter sixty-a of  
5 this code.

6 (q) The sentences provided in this section upon conviction for  
7 a violation of this article are mandatory and are not subject to  
8 suspension or probation: *Provided*, That the court may apply the  
9 provisions of article eleven-a, chapter sixty-two of this code to  
10 a person sentenced or committed to a term of one year or less for  
11 a first offense under this section: *Provided further*, That the  
12 court may impose a term of conditional probation pursuant to  
13 section two-b of this article to persons adjudicated thereunder.  
14 An order for home detention by the court pursuant to the provisions  
15 of article eleven-b of said chapter may be used as an alternative  
16 sentence to any period of incarceration required by this section  
17 for a first or subsequent offense: *Provided, however*, That for any  
18 period of home incarceration ordered for a person convicted of  
19 second offense under this section, electronic monitoring shall be  
20 required for no fewer than five days of the total period of home  
21 confinement ordered and the offender may not leave home for those  
22 five days notwithstanding the provisions of section five, article  
23 eleven-b, chapter sixty-two of this code: *Provided further*, That  
24 for any period of home incarceration ordered for a person convicted  
25 of a third or subsequent violation of this section, electronic  
26 monitoring shall be included for no fewer than ten days of the

1 total period of home confinement ordered and the offender may not  
2 leave home for those ten days notwithstanding section five, article  
3 eleven-b, chapter sixty-two of this code.