

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

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

4 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

7 (a) Any person who:

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

9 (A) Is under the influence of alcohol;

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

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

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

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

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

20 (3) Commits the act or failure in reckless disregard of the
21 safety of others and when the influence of alcohol, controlled
22 substances or drugs is shown to be a contributing cause to the
23 death, is guilty of a felony and, upon conviction thereof, shall be

1 imprisoned in a state correctional facility for not less than two
2 years nor more than ten years and shall be fined not less than
3 \$1,000 nor more than \$3,000.

4 (b) Any person who:

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

6 (A) Is under the influence of alcohol;

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

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

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

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

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

20 (c) Any person who:

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

22 (A) Is under the influence of alcohol;

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

24 (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; or

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

5 (2) While driving does any act forbidden by law or fails to
6 perform any duty imposed by law in the driving of the vehicle,
7 which act or failure proximately causes bodily injury to any person
8 other than himself or herself, is guilty of a misdemeanor and, upon
9 conviction thereof, shall be confined in jail for not less than one
10 day nor more than one year, which jail term is to include actual
11 confinement of not less than twenty-four hours, and shall be fined
12 not less than \$200 nor more than \$1,000; or

13 (3) (A) While driving does any act forbidden by law or fails
14 to perform any duty imposed by law in the driving of the vehicle,
15 which act or failure proximately causes serious bodily injury to
16 any person other than himself or herself at a time when the
17 privilege to drive of the person driving has been lawfully
18 suspended or revoked for driving under the influence of alcohol,
19 controlled substances or other drugs, or any combination thereof,
20 or for driving while having an alcoholic concentration in his or
21 her blood of two hundredths of one percent or more, by weight, or
22 for refusing to take a secondary chemical test of blood alcohol
23 content under any provision of this article or under a municipal
24 ordinance of this state or any other state or under a statute of

1 the United States or of any other state which has the same
2 requirements for the suspension or revocation of the privilege to
3 drive, or at a time when the person driving is participating in the
4 Motor Vehicle Alcohol Test And Lock Program pursuant to section
5 two-b of this article, is guilty of a felony and, upon conviction
6 thereof, shall be imprisoned in a state correctional facility for
7 not less than one year nor more than three years and shall be fined
8 not less than \$1,000 nor more than \$3,000;

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

17 (d) For purposes of this subdivision, "serious bodily injury"
18 means bodily injury which creates a substantial risk of death,
19 which causes serious or prolonged disfigurement, prolonged
20 impairment of health or prolonged loss or impairment of the
21 function of any bodily organ.

22 ~~(d)~~ (e) Any person who:

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

24 (A) Is under the influence of alcohol;

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

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

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

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

8 (2) Is guilty of a misdemeanor and, upon conviction thereof,
9 except as provided in section two-b of this article, shall be
10 confined in jail for up to six months and shall be fined not less
11 than \$100 nor more than \$500. A person sentenced pursuant to this
12 subdivision shall receive credit for any period of actual
13 confinement he or she served upon arrest for the subject offense.

14 ~~(e)~~(f) Any person who drives a vehicle in this state while he
15 or she has an alcohol concentration in his or her blood of fifteen
16 hundredths of one percent or more, by weight, is guilty of a
17 misdemeanor and, upon conviction thereof, shall be confined in jail
18 for not less than two days nor more than six months, which jail
19 term is to include actual confinement of not less than twenty-four
20 hours, and shall be fined not less than \$200 nor more than \$1,000.
21 A person sentenced pursuant to this subdivision shall receive
22 credit for any period of actual confinement he or she served upon
23 arrest for the subject offense.

24 ~~(f)~~(g) Any person who, being an habitual user of narcotic

1 drugs or amphetamine or any derivative thereof, drives a vehicle in
2 this state is guilty of a misdemeanor and, upon conviction thereof,
3 shall be confined in jail for not less than one day nor more than
4 six months, which jail term is to include actual confinement of not
5 less than twenty-four hours, and shall be fined not less than \$100
6 nor more than \$500. A person sentenced pursuant to this
7 subdivision shall receive credit for any period of actual
8 confinement he or she served upon arrest for the subject offense.

9 ~~(g)~~ (h) Any person who:

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

12 (A) Is under the influence of alcohol;

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

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

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

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

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

22 ~~(h)~~ (i) Any person who knowingly permits his or her vehicle to
23 be driven in this state by any other person who is an habitual user
24 of narcotic drugs or amphetamine or any derivative thereof is

1 guilty of a misdemeanor and, upon conviction thereof, shall be
2 confined in jail for not more than six months and shall be fined
3 not less than \$100 nor more than \$500.

4 ~~(i)~~(j) Any person under the age of twenty-one years who drives
5 a vehicle in this state while he or she has an alcohol
6 concentration in his or her blood of two hundredths of one percent
7 or more, by weight, but less than eight hundredths of one percent,
8 by weight, for a first offense under this subsection is guilty of
9 a misdemeanor and, upon conviction thereof, shall be fined not less
10 than \$25 nor more than \$100. For a second or subsequent offense
11 under this subsection, the person is guilty of a misdemeanor and,
12 upon conviction thereof, shall be confined in jail for twenty-four
13 hours and shall be fined not less than \$100 nor more than \$500. A
14 person who is charged with a first offense under the provisions of
15 this subsection may move for a continuance of the proceedings, from
16 time to time, to allow the person to participate in the Motor
17 Vehicle Alcohol Test and Lock Program as provided in section three-
18 a, article five-a of this chapter. Upon successful completion of
19 the program, the court shall dismiss the charge against the person
20 and expunge the person's record as it relates to the alleged
21 offense. In the event the person fails to successfully complete
22 the program, the court shall proceed to an adjudication of the
23 alleged offense. A motion for a continuance under this subsection
24 may not be construed as an admission or be used as evidence. A

1 person arrested and charged with an offense under the provisions of
2 this subsection or subsection (a), (b), (c), (d), (e), (f), (g) or
3 ~~(h)~~(i) of this section may not also be charged with an offense
4 under this subsection arising out of the same transaction or
5 occurrence.

6 ~~(j)~~(k) Any person who:

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

8 (A) Is under the influence of alcohol;

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

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

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

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

15 (2) The person while driving has on or within the motor
16 vehicle one or more other persons who are unemancipated minors who
17 have not reached their sixteenth birthday is guilty of a
18 misdemeanor and, upon conviction thereof, shall be confined in jail
19 for not less than two days nor more than twelve months, which jail
20 term is to include actual confinement of not less than forty-eight
21 hours and shall be fined not less than \$200 nor more than \$1,000.

22 ~~(k)~~(l) A person violating any provision of subsection (b),
23 (c), (d), (e), (f), (g) or (i) of this section, for the second
24 offense under this section, is guilty of a misdemeanor and, upon

1 conviction thereof, shall be confined in jail for not less than six
2 months nor more than one year and the court may, in its discretion,
3 impose a fine of not less than \$1,000 nor more than \$3,000.

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

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

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

19 (2) Any conviction under a municipal ordinance of this state
20 or any other state or a statute of the United States or of any
21 other state of an offense which has the same elements as an offense
22 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of
23 this section, which offense occurred within the ten-year period
24 immediately preceding the date of arrest in the current proceeding;

1 and,

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

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

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

1 ~~(d)~~ (e), ~~(e)~~ (f), ~~(f)~~ (g), ~~(g)~~ (h) or ~~(h)~~ (i) of this section.

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

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

1 monitoring shall be included for no fewer than ten days of the
2 total period of home confinement ordered and the offender may not
3 leave home for those ten days notwithstanding section five, article
4 eleven-b, chapter sixty-two of this code.

NOTE: The purpose of the bill is to establish the felony offense of causing serious bodily injury to another person by one who is driving under the influence of alcohol at a time when the driver's privilege to drive has been lawfully suspended or revoked for a driving under the influence of alcohol offense or the driver is participating in the Motor Vehicle Alcohol Test And Lock Program.

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