

Senate Bill No. 579

(By Senators Foster, Wells and Miller)

[Introduced February 21, 2011; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,
11 1931, as amended, relating to making it a felony to drive a
12 vehicle while under the influence of alcohol, controlled
13 substance or other drug that causes serious bodily injury to
14 another person; establishing penalties for first and
15 subsequent violations of certain provisions; and defining a
16 term.

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

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

20 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

21 **§17C-5-2. Driving under influence of alcohol, controlled**
22 **substances or drugs; penalties.**

23 (a) 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; or

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; and

10 (3) Commits the act or failure in reckless disregard of the
11 safety of others ~~and when the influence of alcohol, controlled~~
12 ~~substances or drugs is shown to be a contributing cause to the~~
13 ~~death,~~ is 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 shall be fined not less than
16 \$1,000 nor more than \$3,000.

17 (b) Any person who:

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

19 (A) Is under the influence of alcohol;

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

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

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

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

26 (2) While driving does any act forbidden by law or fails to

1 perform any duty imposed by law in the driving of the vehicle,
2 which act or failure proximately causes the death of any person
3 within one year next following the act or failure, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be confined in jail
5 for not less than ninety days nor more than one year and shall be
6 fined not less than \$500 nor more than \$1,000.

7 (c) 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 bodily injury to any person
19 other than himself or herself, is guilty of a misdemeanor and, upon
20 conviction thereof, shall be confined in jail for not less than one
21 day nor more than one year, which jail term is to include actual
22 confinement of not less than twenty-four hours, and shall be fined
23 not less than \$200 nor more than \$1,000.

24 (d) Any person who:

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

26 (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) Any person who drives a vehicle in this state while he or
15 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) Any person who, being an habitual user of narcotic drugs
25 or amphetamine or any derivative thereof, drives a vehicle in this
26 state is guilty of a misdemeanor and, upon conviction thereof,

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

7 (g) Any person who:

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

10 (A) Is under the influence of alcohol;

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

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

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

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

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

20 (h) Any person who knowingly permits his or her vehicle to be
21 driven in this state by any other person who is an habitual user of
22 narcotic drugs or amphetamine or any derivative thereof is guilty
23 of a misdemeanor and, upon conviction thereof, shall be confined in
24 jail for not more than six months and shall be fined not less than
25 \$100 nor more than \$500.

26 (i) Any person under the age of twenty-one years who drives a

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

21 A person arrested and charged with an offense under the provisions
22 of this subsection or subsection (a), (b), (c), (d), (e), (f), (g)
23 or (h) of this section may not also be charged with an offense
24 under this subsection arising out of the same transaction or
25 occurrence.

26 (j) Any person who:

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

2 (A) Is under the influence of alcohol;

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

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

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

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

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

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

22 (l) A person violating any provision of subsection (b), (c),
23 (d), (e), (f), (g) or (i) of this section, for the third or any
24 subsequent offense under this section, is guilty of a felony and,
25 upon conviction thereof, shall be imprisoned in a state
26 correctional facility for not less than one nor more than three

1 years and the court may, in its discretion, impose a fine of not
2 less than \$3,000 nor more than \$5,000.

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

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

11 (2) Any conviction under a municipal ordinance of this state
12 or any other state or a statute of the United States or of any
13 other state of an offense which has the same elements as an offense
14 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of
15 this section, which offense occurred within the ten-year period
16 immediately preceding the date of arrest in the current proceeding;
17 and,

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

22 (n) A person may be charged in a warrant or indictment or
23 information for a second or subsequent offense under this section
24 if the person has been previously arrested for or charged with a
25 violation of this section which is alleged to have occurred within
26 the applicable time period for prior offenses, notwithstanding the

1 fact that there has not been a final adjudication of the charges
2 for the alleged previous offense. In that case, the warrant or
3 indictment or information must set forth the date, location and
4 particulars of the previous offense or offenses. No person may be
5 convicted of a second or subsequent offense under this section
6 unless the conviction for the previous offense has become final, or
7 the person has previously had a period of conditional probation
8 imposed pursuant to section two-b of this article.

9 (o) The fact that any person charged with a violation of
10 subsection (a), (b), (c), (d), (e) or (f) of this section, or any
11 person permitted to drive as described under subsection (g) or (h)
12 of this section, is or has been legally entitled to use alcohol, a
13 controlled substance or a drug does not constitute a defense
14 against any charge of violating subsection (a), (b), (c), (d), (e),
15 (f), (g) or (h) of this section.

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

19 (q) The sentences provided in this section upon conviction for
20 a violation of this article are mandatory and are not subject to
21 suspension or probation: *Provided*, That the court may apply the
22 provisions of article eleven-a, chapter sixty-two of this code to
23 a person sentenced or committed to a term of one year or less for
24 a first offense under this section: *Provided further however*, That
25 the court may impose a term of conditional probation pursuant to
26 section two-b of this article to persons adjudicated thereunder.

1 An order for home detention by the court pursuant to the provisions
 2 of article eleven-b of said chapter may be used as an alternative
 3 sentence to any period of incarceration required by this section
 4 for a first or subsequent offense: *Provided however further*, That
 5 for any period of home incarceration ordered for a person convicted
 6 of second offense under this section, electronic monitoring shall
 7 be required for no fewer than five days of the total period of home
 8 confinement ordered and the offender may not leave home for those
 9 five days notwithstanding the provisions of section five, article
 10 eleven-b, chapter sixty-two of this code: *And provided further*,
 11 That for any period of home incarceration ordered for a person
 12 convicted of a third or subsequent violation of this section,
 13 electronic monitoring shall be included for no fewer than ten days
 14 of the total period of home confinement ordered and the offender
 15 may not leave home for those ten days notwithstanding section five,
 16 article eleven-b, chapter sixty-two of this code.

17 (r) Any person who:

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

19 (A) Is under the influence of alcohol;

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

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

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

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

26 (2) While driving does any act forbidden by law or fails to

1 perform any duty imposed by law in the driving of the vehicle,
2 which act or failure proximately causes serious bodily injury to
3 any person other than himself or herself; and

4 (3) Commits the act or failure in reckless disregard of the
5 safety of others is guilty of a felony and, upon conviction
6 thereof, shall be imprisoned in a state correctional facility for
7 not less than one nor more than three years and the court may, in
8 its discretion, impose a fine of not less than \$3,000 nor more than
9 \$5,000.

10 (4) For purposes of this subsection, "serious bodily injury"
11 means bodily injury which creates a substantial risk of death,
12 which causes serious or prolonged disfigurement, prolonged
13 impairment of health or prolonged loss or impairment of the
14 function of any bodily organ.

NOTE: The purpose of this bill is to make it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug that causes serious bodily injury to another person. The bill removes the requirement that alcohol, a controlled substance or drugs must be shown to have been a contributing cause to another person's death. The bill establishes penalties for first and subsequent violations of certain provisions. The bill also defines "serious bodily injury."

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