

COMMITTEE SUBSTITUTE

FOR

H. B. 2922

(BY DELEGATES WHITE, MILEY, KOMINAR, BOGGS AND PERDUE)

(Originating in the Committee on the Judiciary)
[February 8, 2011]

A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to establishing the felony offense of causing serious bodily injury to another person by a person who is driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or driving while having an alcoholic concentration in his or her blood of two hundredths of one percent or more, by weight, at a time when his or her privilege to drive has been lawfully

suspended or revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for refusing to take a secondary chemical test of blood alcohol content, or at a time when he or she is participating in the Motor Vehicle Alcohol Test And Lock Program; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while he or she:
- 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;
- 6 (D) Is under the combined influence of alcohol and any
- 7 controlled substance or any other drug; or

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

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

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

22 (b) Any person who:

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

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;

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

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

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

39 (c) Any person who:

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

41 (A) Is under the influence of alcohol;

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

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

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

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

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

57 (3) (A) While driving does any act forbidden by law or
58 fails to perform any duty imposed by law in the driving of
59 the vehicle, which act or failure proximately causes serious
60 bodily injury to any person other than himself or herself at a
61 time when the privilege to drive of the person driving has
62 been lawfully suspended or revoked: (i) for driving under the
63 influence of alcohol, controlled substances or other drugs, or
64 any combination thereof, *Provided*, That this subparagraph

65 does not include a suspension or revocation resulting from a
66 violation of subsection (i) of this section, or (ii) for refusing
67 to take a secondary chemical test of blood alcohol content
68 under any provision of this article or under a municipal
69 ordinance of this state or any other state or under a statute of
70 the United States or of any other state which has the same
71 requirements for the suspension or revocation of the privilege
72 to drive, or (iii) at a time when the person driving is
73 participating in the Motor Vehicle Alcohol Test And Lock
74 Program pursuant to section two-b of this article, is guilty of
75 a felony and, upon conviction thereof, shall be imprisoned in
76 a state correctional facility for not less than one year nor
77 more than three years and shall be fined not less than \$1,000
78 nor more than \$3,000;

79 (B) Notwithstanding any provision of subsection (l) or
80 (m) of this section to the contrary, a person violating any
81 provision of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
82 this section, for any subsequent offense under this
83 subdivision, is guilty of a felony and, upon conviction

84 thereof, shall be imprisoned in a state correctional facility for
85 not less than two years nor more than ten years and the court
86 may, in its discretion, impose a fine of not less than \$3,000
87 nor more than \$5,000.

88 (C) For purposes of this subdivision, “serious bodily
89 injury” means bodily injury which creates a substantial risk
90 of death, which causes serious or prolonged disfigurement,
91 prolonged impairment of health or prolonged loss or
92 impairment of the function of any bodily organ.

93 (d) Any person who:

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

95 (A) Is under the influence of alcohol;

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

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

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

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

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

110 (e) Any person who drives a vehicle in this state while he
111 or she has an alcohol concentration in his or her blood of
112 fifteen hundredths of one percent or more, by weight, is
113 guilty of a misdemeanor and, upon conviction thereof, shall
114 be confined in jail for not less than two days nor more than
115 six months, which jail term is to include actual confinement
116 of not less than twenty-four hours, and shall be fined not less
117 than \$200 nor more than \$1,000. A person sentenced
118 pursuant to this subdivision shall receive credit for any
119 period of actual confinement he or she served upon arrest for
120 the subject offense.

121 (f) Any person who, being an habitual user of narcotic
122 drugs or amphetamine or any derivative thereof, drives a
123 vehicle in this state is guilty of a misdemeanor and, upon
124 conviction thereof, shall be confined in jail for not less than
125 one day nor more than six months, which jail term is to
126 include actual confinement of not less than twenty-four
127 hours, and shall be fined not less than \$100 nor more than
128 \$500. A person sentenced pursuant to this subdivision shall
129 receive credit for any period of actual confinement he or she
130 served upon arrest for the subject offense.

131 (g) Any person who:

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

134 (A) Is under the influence of alcohol;

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

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

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

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

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

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

151 (i) Any person under the age of twenty-one years who
152 drives a vehicle in this state while he or she has an alcohol
153 concentration in his or her blood of two hundredths of one
154 percent or more, by weight, but less than eight hundredths of
155 one percent, by weight, for a first offense under this
156 subsection is guilty of a misdemeanor and, upon conviction
157 thereof, shall be fined not less than \$25 nor more than \$100.

158 For a second or subsequent offense under this subsection, the
159 person is guilty of a misdemeanor and, upon conviction
160 thereof, shall be confined in jail for twenty-four hours and
161 shall be fined not less than \$100 nor more than \$500. A
162 person who is charged with a first offense under the
163 provisions of this subsection may move for a continuance of
164 the proceedings, from time to time, to allow the person to
165 participate in the Motor Vehicle Alcohol Test and Lock
166 Program as provided in section three-a, article five-a of this
167 chapter. Upon successful completion of the program, the
168 court shall dismiss the charge against the person and expunge
169 the person's record as it relates to the alleged offense. In the
170 event the person fails to successfully complete the program,
171 the court shall proceed to an adjudication of the alleged
172 offense. A motion for a continuance under this subsection
173 may not be construed as an admission or be used as evidence.
174 A person arrested and charged with an offense under the
175 provisions of this subsection or subsection (a), (b), (c), (d),
176 (e), (f), (g) or (h) of this section may not also be charged with

177 an offense under this subsection arising out of the same
178 transaction or occurrence.

179 (j) Any person who:

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

181 (A) Is under the influence of alcohol;

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

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

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

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

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

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

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

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

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

219 (2) Any conviction under a municipal ordinance of this
220 state or any other state or a statute of the United States or of
221 any other state of an offense which has the same elements as
222 an offense described in subsection (a), (b), (c), (d), (e), (f),
223 (g) or (h) of this section, which offense occurred within the
224 ten-year period immediately preceding the date of arrest in
225 the current proceeding; and,

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

231 (n) A person may be charged in a warrant or indictment
232 or information for a second or subsequent offense under this

233 section if the person has been previously arrested for or charged
234 with a violation of this section which is alleged to have occurred
235 within the applicable time period for prior offenses,
236 notwithstanding the fact that there has not been a final
237 adjudication of the charges for the alleged previous offense. In
238 that case, the warrant or indictment or information must set forth
239 the date, location and particulars of the previous offense or
240 offenses. No person may be convicted of a second or
241 subsequent offense under this section unless the conviction for
242 the previous offense has become final, or the person has
243 previously had a period of conditional probation imposed
244 pursuant to section two-b of this article.

245 (o) The fact that any person charged with a violation of
246 subsection (a), (b), (c), (d), (e) or (f) of this section, or any
247 person permitted to drive as described under subsection (g)
248 or (h) of this section, is or has been legally entitled to use
249 alcohol, a controlled substance or a drug does not constitute
250 a defense against any charge of violating subsection (a), (b),
251 (c), (d), (e), (f), (g) or (h) of this section.

252 (p) For purposes of this section, the term “controlled
253 substance” has the meaning ascribed to it in chapter sixty-a
254 of this code.

255 (q) The sentences provided in this section upon
256 conviction for a violation of this article are mandatory and
257 are not subject to suspension or probation: *Provided*, That
258 the court may apply the provisions of article eleven-a,
259 chapter sixty-two of this code to a person sentenced or
260 committed to a term of one year or less for a first offense
261 under this section: *Provided further*, That the court may
262 impose a term of conditional probation pursuant to section
263 two-b of this article to persons adjudicated thereunder. An
264 order for home detention by the court pursuant to the
265 provisions of article eleven-b of said chapter may be used as
266 an alternative sentence to any period of incarceration
267 required by this section for a first or subsequent offense:
268 *Provided, however*, That for any period of home
269 incarceration ordered for a person convicted of second
270 offense under this section, electronic monitoring shall be

271 required for no fewer than five days of the total period of
272 home confinement ordered and the offender may not leave
273 home for those five days notwithstanding the provisions of
274 section five, article eleven-b, chapter sixty-two of this code:
275 *Provided further*, That for any period of home incarceration
276 ordered for a person convicted of a third or subsequent
277 violation of this section, electronic monitoring shall be
278 included for no fewer than ten days of the total period of
279 home confinement ordered and the offender may not leave
280 home for those ten days notwithstanding section five, article
281 eleven-b, chapter sixty-two of this code.