

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 60**

4 (By Senators Miller and Unger)

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6 [Originating in the Committee on Transportation and  
7 Infrastructure;  
8 reported February 22, 2012.]  
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10  
11 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,  
12 1931, as amended, relating to making it a felony to drive a  
13 vehicle while under the influence of alcohol, controlled  
14 substance or other drug and recklessly causing serious bodily  
15 injury to another person; and establishing penalties for first  
16 and subsequent violations of certain provisions.

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;

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; and

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

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

18 (b) Any person who:

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

20 (A) Is under the influence of alcohol;

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

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

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

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

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

8 (c) Any person who:

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

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; or

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

17 (2) While driving does any act forbidden by law or fails to  
18 perform any duty imposed by law in the driving of the vehicle,  
19 which act or failure proximately causes bodily injury to any person  
20 other than himself or herself, is guilty of a misdemeanor and, upon  
21 conviction thereof, shall be confined in jail for not less than one  
22 day nor more than one year, which jail term is to include actual  
23 confinement of not less than twenty-four hours, and shall be fined  
24 not less than \$200 nor more than \$1,000.

25 (d) Any person who:

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

1 (A) Is under the influence of alcohol;

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

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

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

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

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

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

25 (f) Any person who, being an habitual user of narcotic drugs  
26 or amphetamine or any derivative thereof, drives a vehicle in this

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

8 (g) Any person who:

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

11 (A) Is under the influence of alcohol;

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

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

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

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

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

21 (h) Any person who knowingly permits his or her vehicle to be  
22 driven in this state by any other person who is an habitual user of  
23 narcotic drugs or amphetamine or any derivative thereof is guilty  
24 of a misdemeanor and, upon conviction thereof, shall be confined in  
25 jail for not more than six months and shall be fined not less than  
26 \$100 nor more than \$500.

1 (i) Any person under the age of twenty-one years who drives a  
2 vehicle in this state while he or she has an alcohol concentration  
3 in his or her blood of two hundredths of one percent or more, by  
4 weight, but less than eight hundredths of one percent, by weight,  
5 for a first offense under this subsection is guilty of a  
6 misdemeanor and, upon conviction thereof, shall be fined not less  
7 than \$25 nor more than \$100. For a second or subsequent offense  
8 under this subsection, the person is guilty of a misdemeanor and,  
9 upon conviction thereof, shall be confined in jail for twenty-four  
10 hours and shall be fined not less than \$100 nor more than \$500. A  
11 person who is charged with a first offense under the provisions of  
12 this subsection may move for a continuance of the proceedings, from  
13 time to time, to allow the person to participate in the Motor  
14 Vehicle Alcohol Test and Lock Program as provided in section three-  
15 a, article five-a of this chapter. Upon successful completion of  
16 the program, the court shall dismiss the charge against the person  
17 and expunge the person's record as it relates to the alleged  
18 offense. In the event the person fails to successfully complete  
19 the program, the court shall proceed to an adjudication of the  
20 alleged offense. A motion for a continuance under this subsection  
21 may not be construed as an admission or be used as evidence. A  
22 person arrested and charged with an offense under the provisions of  
23 this subsection or subsection (a), (b), (c), (d), (e), (f), (g) or  
24 (h) of this section may not also be charged with an offense under  
25 this subsection arising out of the same transaction or 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 (~~h~~) 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 (~~h~~) 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, however*, That the  
25 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 further,* That for any  
5 period of home incarceration ordered for a person convicted of  
6 second offense under this section, electronic monitoring shall be  
7 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 and when the influence of alcohol, controlled  
6 substances or drugs is shown to be a contributing cause to the  
7 serious bodily injury, is guilty of a felony and, upon conviction  
8 thereof, shall be imprisoned in a state correctional facility for  
9 not less than one nor more than three years and the court may, in  
10 its discretion, impose a fine of not less than \$3,000 nor more than  
11 \$5,000.

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

17 (5) A person violating this subsection, for the second or any  
18 subsequent offense of this subsection, is guilty of a felony and,  
19 upon conviction thereof, shall be imprisoned in a state  
20 correctional facility for not less than three nor more than five  
21 years and the court may, in its discretion, impose a fine of not  
22 less than \$3,000 nor more than \$5,000.

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 and recklessly causing serious bodily injury to another person. The bill also establishes penalties for

first and subsequent violations of specific provisions of the article.

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