

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 60**

6 (By Senators Miller and Unger)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 24, 2012.]
10 _____

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

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

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

21 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

24 (a) Any person who:

25 (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; and

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

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

19 (b) Any person who:

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

21 (A) Is under the influence of alcohol;
22 (B) Is under the influence of any controlled substance;
23 (C) Is under the influence of any other drug;
24 (D) Is under the combined influence of alcohol and any
25 controlled substance or any other drug; or

26 (E) Has an alcohol concentration in his or her blood of eight

1 hundredths of one percent or more, by weight; and

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

9 (c) Any person who:

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

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; and

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

26 (d) 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) While driving does any act forbidden by law or fails to
10 perform any duty imposed by law in the driving of the vehicle,
11 which act or failure proximately causes serious bodily injury to
12 any person other than himself or herself; and
13 (3) Commits the act or failure in reckless disregard of the
14 safety of others and when the influence of alcohol, controlled
15 substances or drugs is shown to be a contributing cause to the
16 serious bodily injury, is guilty of a felony and, upon conviction
17 thereof, shall be imprisoned in a state correctional facility for
18 not less than one nor more than three years and the court may, in
19 its discretion, impose a fine of not less than \$3,000 nor more than
20 \$5,000.
21 (4) For purposes of this subsection, "serious bodily injury"
22 means bodily injury which creates a substantial risk of death,
23 which causes serious or prolonged disfigurement, prolonged
24 impairment of health or prolonged loss or impairment of the
25 function of any bodily organ.
26 (5) A person violating this subsection, for the second or any

1 subsequent offense of this subsection, is guilty of a felony and,
2 upon conviction thereof, shall be imprisoned in a state
3 correctional facility for not less than three nor more than five
4 years and the court may, in its discretion, impose a fine of not
5 less than \$3,000 nor more than \$5,000.

6 ~~(d)~~ (e) 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, but less than fifteen
15 hundredths of one percent, by weight;

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

22 ~~(e)~~ (f) Any person who drives a vehicle in this state while he
23 or she has an alcohol concentration in his or her blood of fifteen
24 hundredths of one percent or more, by weight, 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 six months, which jail

1 term is to include actual confinement of not less than twenty-four
2 hours, and shall be fined not less than \$200 nor more than \$1,000.
3 A person sentenced pursuant to this subdivision shall receive
4 credit for any period of actual confinement he or she served upon
5 arrest for the subject offense.

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

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

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

18 (A) Is under the influence of alcohol;

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

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

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

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

25 (2) Is guilty of a misdemeanor and, upon conviction thereof,
26 shall be confined in jail for not more than six months and shall be

1 fined not less than \$100 nor more than \$500.

2 ~~(h)~~ (I) Any person who knowingly permits his or her vehicle to
3 be driven in this state by any other person who is an habitual user
4 of narcotic drugs or amphetamine or any derivative thereof is
5 guilty of a misdemeanor and, upon conviction thereof, shall be
6 confined in jail for not more than six months and shall be fined
7 not less than \$100 nor more than \$500.

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

1 alleged offense. A motion for a continuance under this subsection
2 may not be construed as an admission or be used as evidence. A
3 person arrested and charged with an offense under the provisions of
4 this subsection or subsection (a), (b), (c), (d), (e), (f), (g), l
5 (h) or ~~(h)~~ (I) of this section may not also be charged with an
6 offense under this subsection arising out of the same transaction
7 or occurrence.

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

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

1 upon conviction thereof, shall be confined in jail for not less
2 than six months nor more than one year and the court may, in its
3 discretion, impose a fine of not less than \$1,000 nor more than
4 \$3,000.

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

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

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

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

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

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

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

25 ~~(p)~~ (q) For purposes of this section, the term "controlled
26 substance" has the meaning ascribed to it in chapter sixty-a of

1 this code.

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

(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.)