

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 90**

4 (By Senators Miller, Jenkins, Yost, Unger, Fitzsimmons and Beach)

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6 [Originating in the Committee on Transportation and  
7 Infrastructure; reported March 28, 2013.]  
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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 cause serious bodily injury to  
15 another person under certain circumstances; defining "serious  
16 bodily injury"; making technical corrections; and establishing  
17 penalties for first and subsequent violations of certain  
18 provisions.

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

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

22 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

23 **§17C-5-2. Driving under influence of alcohol, controlled**  
24 **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 eight  
9 hundredths of one percent or more, by weight; and  
10 (2) While driving does any act forbidden by law or fails to  
11 perform any duty imposed by law in the driving of the vehicle,  
12 which act or failure proximately causes the death of any person  
13 within one year next following the act or failure; and  
14 (3) Commits the act or failure in reckless disregard of the  
15 safety of others and when the influence of alcohol, controlled  
16 substances or drugs is shown to be a contributing cause to the  
17 death, is guilty of a felony and, upon conviction thereof, shall be  
18 imprisoned in a state correctional facility for not less than two  
19 years nor more than ten years and shall be fined not less than  
20 \$1,000 nor more than \$3,000.

21 (b) Any person who:  
22 (1) Drives a vehicle in this state while he or she:  
23 (A) Is under the influence of alcohol;  
24 (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, is guilty of a  
10 misdemeanor and, upon conviction thereof, shall be confined in jail  
11 for not less than ninety days nor more than one year and shall be  
12 fined not less than \$500 nor more than \$1,000.

13 (c) Any person who:

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

15 (A) Is under the influence of alcohol;

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

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

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

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

22 (2) While driving does any act forbidden by law or fails to  
23 perform any duty imposed by law in the driving of the vehicle,  
24 which act or failure proximately causes bodily injury to any person

1 other than himself or herself, is guilty of a misdemeanor and, upon  
2 conviction thereof, shall be confined in jail for not less than one  
3 day nor more than one year, which jail term is to include actual  
4 confinement of not less than twenty-four hours, and shall be fined  
5 not less than \$200 nor more than \$1,000.

6 (d) 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) Any person who drives a vehicle in this state while he or  
23 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

1 misdemeanor and, upon conviction thereof, shall be confined in jail  
2 for not less than two days nor more than six months, which jail  
3 term is to include actual confinement of not less than twenty-four  
4 hours, and shall be fined not less than \$200 nor more than \$1,000.  
5 A person sentenced pursuant to this subdivision shall receive  
6 credit for any period of actual confinement he or she served upon  
7 arrest for the subject offense.

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

17 (g) Any person who:

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

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

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

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

6 (h) Any person who knowingly permits his or her vehicle to be  
7 driven in this state by any other person who is an habitual user of  
8 narcotic drugs or amphetamine or any derivative thereof is guilty  
9 of a misdemeanor and, upon conviction thereof, shall be confined in  
10 jail for not more than six months and shall be fined not less than  
11 \$100 nor more than \$500.

12 (i) Any person under the age of twenty-one years who drives a  
13 vehicle in this state while he or she has an alcohol concentration  
14 in his or her blood of two hundredths of one percent or more, by  
15 weight, but less than eight hundredths of one percent, by weight,  
16 for a first offense under this subsection is guilty of a  
17 misdemeanor and, upon conviction thereof, shall be fined not less  
18 than \$25 nor more than \$100. For a second or subsequent offense  
19 under this subsection, the person is guilty of a misdemeanor and,  
20 upon conviction thereof, shall be confined in jail for twenty-four  
21 hours and shall be fined not less than \$100 nor more than \$500. A  
22 person who is charged with a first offense under the provisions of  
23 this subsection may move for a continuance of the proceedings, from  
24 time to time, to allow the person to participate in the Motor

1 Vehicle Alcohol Test and Lock Program as provided in section  
2 three-a, article five-a of this chapter. Upon successful  
3 completion of the program, the court shall dismiss the charge  
4 against the person and expunge the person's record as it relates to  
5 the alleged offense. In the event the person fails to successfully  
6 complete the program, the court shall proceed to an adjudication of  
7 the alleged offense. A motion for a continuance under this  
8 subsection may not be construed as an admission or be used as  
9 evidence.

10 A person arrested and charged with an offense under the provisions  
11 of this subsection or subsection (a), (b), (c), (d), (e), (f), (g)  
12 or (h) of this section may not also be charged with an offense  
13 under this subsection arising out of the same transaction or  
14 occurrence.

15 (j) Any person who:

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

17 (A) Is under the influence of alcohol;

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

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

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

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

24 (2) The person while driving has on or within the motor

1 vehicle one or more other persons who are unemancipated minors who  
2 have not reached their sixteenth birthday is guilty of a  
3 misdemeanor and, upon conviction thereof, shall be confined in jail  
4 for not less than two days nor more than twelve months, which jail  
5 term is to include actual confinement of not less than forty-eight  
6 hours and shall be fined not less than \$200 nor more than \$1,000.

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

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

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

23 (1) Any conviction under the provisions of subsection (a),  
24 (b), (c), (d), (e), (f) or (g) of this section or under a prior



1 enactment of this section for an offense which occurred within the  
2 ten-year period immediately preceding the date of arrest in the  
3 current proceeding;

4       (2) Any conviction under a municipal ordinance of this state  
5 or any other state or a statute of the United States or of any  
6 other state of an offense which has the same elements as an offense  
7 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of  
8 this section, which offense occurred within the ten-year period  
9 immediately preceding the date of arrest in the current proceeding;  
10 and,

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

15       (n) A person may be charged in a warrant or indictment or  
16 information for a second or subsequent offense under this section  
17 if the person has been previously arrested for or charged with a  
18 violation of this section which is alleged to have occurred within  
19 the applicable time period for prior offenses, notwithstanding the  
20 fact that there has not been a final adjudication of the charges  
21 for the alleged previous offense. In that case, the warrant or  
22 indictment or information must set forth the date, location and  
23 particulars of the previous offense or offenses. No person may be  
24 convicted of a second or subsequent offense under this section

1 unless the conviction for the previous offense has become final, or  
2 the person has previously had a period of conditional probation  
3 imposed pursuant to section two-b of this article.

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

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

14 (q) The sentences provided in this section upon conviction for  
15 a violation of this article are mandatory and are not subject to  
16 suspension or probation: *Provided*, That the court may apply the  
17 provisions of article eleven-a, chapter sixty-two of this code to  
18 a person sentenced or committed to a term of one year or less for  
19 a first offense under this section: *Provided, ~~further~~ however,*  
20 That the court may impose a term of conditional probation pursuant  
21 to section two-b of this article to persons adjudicated thereunder.  
22 An order for home detention by the court pursuant to the provisions  
23 of article eleven-b of said chapter may be used as an alternative  
24 sentence to any period of incarceration required by this section

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

14 (r) Any person who:

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

16 (A) Is under the influence of alcohol;

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

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

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

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

23 (2) While driving does any act forbidden by law or fails to  
24 perform any duty imposed by law in the driving of the vehicle,

1 which act or failure proximately causes serious bodily injury to  
2 any person other than himself or herself; and

3 (3) Commits the act or failure in reckless disregard of the  
4 safety of others and when the influence of alcohol, controlled  
5 substances or drugs is shown to be a contributing cause to the  
6 serious bodily injury, is guilty of a felony and, upon conviction  
7 thereof, shall be imprisoned in a state correctional facility for  
8 not less than one nor more than three years and the court may, in  
9 its discretion, impose a fine of not less than \$3,000 nor more than  
10 \$5,000.

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