

1 **H. B. 2500**

2
3 (By Delegates Sobonya and Border)

4 [Introduced February 15, 2013; referred to the
5 Committee on the Judiciary then Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,
11 1931, as amended, relating to increasing the penalty for
12 driving under the influence causing death.

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

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

16 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

19 (a) 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;

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

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

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

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

16 (b) Any person who:

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

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;

23 (E) Has an alcohol concentration in his or her blood of eight
24 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.

1 (d) 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, but less than fifteen
10 hundredths of one percent, by weight;

11 (2) Is guilty of a misdemeanor and, upon conviction thereof,
12 except as provided in section two-b of this article, shall be
13 confined in jail for up to six months and shall be fined not less
14 than \$100 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 (e) Any person who drives a vehicle in this state while he or
18 she has an alcohol concentration in his or her blood of fifteen
19 hundredths of one percent or more, by weight, 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 six months, which jail
22 term is to include actual confinement of not less than twenty-four
23 hours, and shall be fined not less than \$200 nor more than \$1,000.
24 A person sentenced pursuant to this subdivision shall receive

1 credit for any period of actual confinement he or she served upon
2 arrest for the subject offense.

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

12 (g) Any person who:

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

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;

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

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

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

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

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

8 (j) 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) A person violating any provision of subsection (b), (c),

1 (d), (e), (f), (g) or (I) of this section, for the second offense
2 under this section, is guilty of a misdemeanor and, upon conviction
3 thereof, shall be confined in jail for not less than six months nor
4 more than one year and the court may, in its discretion, impose a
5 fine of not less than \$1,000 nor more than \$3,000.

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

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

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

21 (2) Any conviction under a municipal ordinance of this state
22 or any other state or a statute of the United States or of any
23 other state of an offense which has the same elements as an offense
24 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of

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

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

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

21 (o) The fact that any person charged with a violation of
22 subsection (a), (b), (c), (d), (e) or (f) of this section, or any
23 person permitted to drive as described under subsection (g) or (h)
24 of this section, is or has been legally entitled to use alcohol, a

1 controlled substance or a drug does not constitute a defense against
2 any charge of violating subsection (a), (b), (c), (d), (e), (f), (g)
3 or (h) of this section.

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

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

1 for any period of home incarceration ordered for a person convicted
2 of a third or subsequent violation of this section, electronic
3 monitoring shall be included for no fewer than ten days of the total
4 period of home confinement ordered and the offender may not leave
5 home for those ten days notwithstanding section five, article
6 eleven-b, chapter sixty-two of this code.

NOTE: The purpose of this bill is to increase the penalty for driving under the influence causing death from two to ten years to five to fifteen years in prison.

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