

1 **Senate Bill No. 90**

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

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4 [Introduced February 13, 2013; referred to the Committee on  
5 Transportation and Infrastructure; and then to the Committee on  
6 the Judiciary.]  
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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; and establishing penalties for first and  
16 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:

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 the death of any person  
12 within one year next following the act or failure; 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 death, is guilty of a felony and, upon conviction thereof, shall be  
17 imprisoned in a state correctional facility for not less than two  
18 years nor more than ten years and shall be fined not less than  
19 \$1,000 nor more than \$3,000.

20 (b) Any person who:

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

22 (A) Is under the influence of alcohol;

23 (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;

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,

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

7 (d) Any person who:

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

9 (A) Is under the influence of alcohol;

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

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

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

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

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

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

1 she has an alcohol concentration in his or her blood of fifteen  
2 hundredths of one percent or more, by weight, 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 six months, which jail  
5 term is to include actual confinement of not less than twenty-four  
6 hours, and shall be fined not less than \$200 nor more than \$1,000.  
7 A person sentenced pursuant to this subdivision shall receive  
8 credit for any period of actual confinement he or she served upon  
9 arrest for the subject offense.

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

19 (g) Any person who:

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

22 (A) Is under the influence of alcohol;

23 (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;

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

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

9 (h) Any person who knowingly permits his or her vehicle to be  
10 driven in this state by any other person who is an habitual user of  
11 narcotic drugs or amphetamine or any derivative thereof is guilty  
12 of a misdemeanor and, upon conviction thereof, shall be confined in  
13 jail for not more than six months and shall be fined not less than  
14 \$100 nor more than \$500.

15 (i) Any person under the age of twenty-one years who drives a  
16 vehicle in this state while he or she has an alcohol concentration  
17 in his or her blood of two hundredths of one percent or more, by  
18 weight, but less than eight hundredths of one percent, by weight,  
19 for a first offense under this subsection is guilty of a  
20 misdemeanor and, upon conviction thereof, shall be fined not less  
21 than \$25 nor more than \$100. For a second or subsequent offense  
22 under this subsection, the person is guilty of a misdemeanor and,  
23 upon conviction thereof, shall be confined in jail for twenty-four

1 hours and shall be fined not less than \$100 nor more than \$500. A  
2 person who is charged with a first offense under the provisions of  
3 this subsection may move for a continuance of the proceedings, from  
4 time to time, to allow the person to participate in the Motor  
5 Vehicle Alcohol Test and Lock Program as provided in section  
6 three-a, article five-a of this chapter. Upon successful  
7 completion of the program, the court shall dismiss the charge  
8 against the person and expunge the person's record as it relates to  
9 the alleged offense. In the event the person fails to successfully  
10 complete the program, the court shall proceed to an adjudication of  
11 the alleged offense. A motion for a continuance under this  
12 subsection may not be construed as an admission or be used as  
13 evidence. A person arrested and charged with an offense under the  
14 provisions of this subsection or subsection (a), (b), (c), (d),  
15 (e), (f), (g) or (h) of this section may not also be charged with  
16 an offense under this subsection arising out of the same  
17 transaction or occurrence.

18 (j) 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

1 controlled substance or any other drug; or

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

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

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

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



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

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

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

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

20 (n) A person may be charged in a warrant or indictment or  
21 information for a second or subsequent offense under this section  
22 if the person has been previously arrested for or charged with a  
23 violation of this section which is alleged to have occurred within

1 the applicable time period for prior offenses, notwithstanding the  
2 fact that there has not been a final adjudication of the charges  
3 for the alleged previous offense. In that case, the warrant or  
4 indictment or information must set forth the date, location and  
5 particulars of the previous offense or offenses. No person may be  
6 convicted of a second or subsequent offense under this section  
7 unless the conviction for the previous offense has become final, or  
8 the person has previously had a period of conditional probation  
9 imposed pursuant to section two-b of this article.

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

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

20 (q) The sentences provided in this section upon conviction for  
21 a violation of this article are mandatory and are not subject to  
22 suspension or probation: *Provided*, That the court may apply the  
23 provisions of article eleven-a, chapter sixty-two of this code to

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

21 (r) Any person who:

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

23 (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 serious bodily injury to  
10 any person other than himself or herself, is guilty of a felony  
11 and, upon conviction thereof, shall be imprisoned in a state  
12 correctional facility for not less than one nor more than three  
13 years and the court may, in its discretion, impose a fine of not  
14 less than \$3,000 nor more than \$5,000.

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

20 (s) A person violating any provision of subsection (b), (c),  
21 (d), (e), (f), (g), (i) or (r) of this section, for the second or  
22 any subsequent offense under this section, is guilty of a felony  
23 and, upon conviction thereof, shall be imprisoned in a state

1 correctional facility for not less than three nor more than five  
2 years and the court may, in its discretion, impose a fine of not  
3 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 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.