

1 **H. B. 4211**

2
3 (By Delegates Fleischauer, Kinsey, Perdue,
4 Barill, Marshall, Pino, Lynch, Hunt,
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6

7 [Introduced January 17, 2014; referred to the
8 Committee on the Judiciary.]
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §17C-5-2c, relating
12 to requiring the seizure, impoundment and forfeiture of the
13 motor vehicles of drivers who have been arrested on at least
14 four occasions for impaired driving; defining a term; setting
15 forth the procedures to be used; requiring notice, hearings
16 and orders; setting forth the rights of lienholders, innocent
17 owners and others; requiring bonds to be posted; permitting
18 petitions to be filed; setting forth damage and liability
19 considerations; permitting the sale of an impounded vehicle
20 under certain circumstances; and defining terms.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new section, designated §17C-5-2c, to read as
24 follows:

25 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

1 §17C-5-2c. Seizure, impoundment, forfeiture of motor vehicles for
2 offenses involving impaired driving.

3 (a) Any person who is arrested for:

4 (1) Driving a vehicle in this state while he or she:

5 (A) Is under the influence of alcohol;

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

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

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

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

12 (2) Has been previously arrested on three or more occasions
13 for the offenses identified in subdivision (1) of this subsection
14 shall have the motor vehicle he or she was driving at the time of
15 the arrest immediately seized and impounded.

16 (b) The motor vehicle seized and impounded pursuant to
17 subsection (a) of this section is subject to the forfeiture
18 provisions of this section.

19 (c) For the purposes of this section any impairment identified
20 in subdivision (1), subsection (a) of this section is defined as
21 "impaired driving."

22 (d) If the charging officer has probable cause to believe that
23 a motor vehicle driven by the defendant may be subject to
24 forfeiture under this section, the officer shall seize the motor

1 vehicle and have it impounded. If the officer determines prior to
2 seizure that the motor vehicle had been reported stolen, the
3 officer may not seize the motor vehicle pursuant to this section.
4 If the officer determines prior to seizure that the motor vehicle
5 was a rental vehicle driven by a person not listed as an authorized
6 driver on the rental contract, the officer may not seize the motor
7 vehicle pursuant to this section, but shall make a reasonable
8 effort to notify the owner of the rental vehicle that the vehicle
9 was stopped and that the driver of the vehicle was not listed as an
10 authorized driver on the rental contract. Probable cause may be
11 based on the officer's personal knowledge, reliable information
12 conveyed by another officer, records of the Division of Motor
13 Vehicles, or other reliable source. The seizing officer shall
14 notify the Division of Motor Vehicles as soon as practical but no
15 later than twenty-four hours after seizure of the motor vehicle of
16 the seizure in accordance with procedures designated under
17 subsection (e) of this section.

18 (e) Within forty-eight hours of receipt within regular
19 business hours of the notice of seizure, the Division of Motor
20 Vehicles shall issue written notification to any lienholder of
21 record and to any motor vehicle owner who was not operating the
22 motor vehicle at the time of the offense. A notice of seizure
23 received outside regular business hours shall be considered to have
24 been received at the start of the next business day. The

1 notification of impoundment shall be sent by first-class mail to
2 the most recent address contained in the division's records. If the
3 motor vehicle is registered in another state, notice shall be sent
4 to the address shown on the records of the state where the motor
5 vehicle is registered. This written notification shall provide
6 notice that the motor vehicle has been seized, state the reason for
7 the seizure and the procedure for requesting release of the motor
8 vehicle. Additionally, if the motor vehicle was damaged while the
9 defendant operator was committing an offense involving impaired
10 driving or incident to the seizure, the agency shall issue written
11 notification of the seizure to the owner's insurance company of
12 record and to any other insurance companies that may be insuring
13 other motor vehicles involved in the accident. The division shall
14 prohibit title to a seized motor vehicle from being transferred by
15 a motor vehicle owner unless authorized by court order.

16 (f) In addition to providing written notification pursuant to
17 subsection (e) of this section, within eight hours of receipt
18 within regular business hours of the notice of seizure, the
19 Division of Motor Vehicles shall notify by facsimile any lienholder
20 of record that has provided the Division of Motor Vehicles with a
21 designated facsimile number for notification of impoundment. The
22 facsimile notification of impoundment shall state that the vehicle
23 has been seized, state the reason for the seizure, and notify the
24 lienholder of the additional written notification that will be

1 provided pursuant to subsection (e) of this section. The Division
2 of Motor Vehicles shall establish procedures to allow a lienholder
3 to provide one designated facsimile number for notification of
4 impoundment for any vehicle for which the lienholder is a
5 lienholder of record and shall maintain a centralized database of
6 the provided facsimile numbers. The lienholder must provide a
7 facsimile number at which the Division of Motor Vehicles may give
8 notification of impoundment at anytime.

9 (g) Upon determining that there is probable cause for seizing
10 a motor vehicle, the seizing officer shall present to a magistrate
11 within the county where the driver was charged an affidavit of
12 impoundment setting forth the basis upon which the motor vehicle
13 has been or will be seized for forfeiture. The magistrate shall
14 review the affidavit of impoundment and if the magistrate
15 determines the requirements of this section have been met, shall
16 order the motor vehicle held. The magistrate may request additional
17 information and may hear from the defendant if the defendant is
18 present. If the magistrate determines the requirements of this
19 section have not been met, the magistrate shall order the motor
20 vehicle released to the motor vehicle owner upon payment of towing
21 and storage fees. If the motor vehicle has not yet been seized, and
22 the magistrate determines that seizure is appropriate, the
23 magistrate shall issue an order of seizure of the motor vehicle.
24 The magistrate shall provide a copy of the order of seizure to the

1 clerk of the court. The clerk shall provide copies of the order of
2 seizure to the prosecuting attorney.

3 (h) An order of seizure shall be valid anywhere in the state.
4 Any officer with territorial jurisdiction may use such force as may
5 be reasonable to seize the motor vehicle and to enter upon the
6 property of the defendant to accomplish the seizure. An officer who
7 has probable cause to believe the motor vehicle is concealed or
8 stored on private property of a person other than the defendant may
9 obtain a search warrant to enter upon that property for the purpose
10 of seizing the motor vehicle.

11 (i) Unless the motor vehicle is towed pursuant to a statewide
12 or regional contract, the seized motor vehicle shall be towed by a
13 commercial towing company designated by the law-enforcement agency
14 that seized the motor vehicle. If either a statewide or regional
15 contractor chooses to contract for local towing services, all
16 towing companies on the towing list for each law-enforcement agency
17 with jurisdiction within the county shall be given written notice
18 and an opportunity to submit proposals prior to a contract for
19 local towing services being awarded.

20 (j) A motor vehicle owner, other than the driver at the time
21 of the underlying offense resulting in the seizure, may apply to
22 the clerk of the court in the county where the charges are pending
23 for pretrial release of the motor vehicle. The clerk shall release
24 the motor vehicle to a nondefendant motor vehicle owner conditioned

1 upon payment of all towing and storage charges incurred as a result
2 of seizure and impoundment of the motor vehicle under the following
3 conditions:

4 (1) The motor vehicle has been seized for not less than
5 twenty-four hours;

6 (2) A bond in an amount equal to the fair market value of the
7 motor vehicle has been executed and is secured by a cash deposit in
8 the full amount of the bond, by a recordable deed of trust to real
9 property in the full amount of the bond or by at least one solvent
10 surety, payable to the county or municipality and conditioned on
11 return of the motor vehicle, in substantially the same condition as
12 it was at the time of seizure and without any new or additional
13 liens or encumbrances, on the day of any hearing scheduled and
14 noticed by the prosecuting attorney, unless the motor vehicle has
15 been permanently released;

16 (3) A check of the records of the Division of Motor Vehicles
17 indicates that the requesting motor vehicle owner has not
18 previously executed an acknowledgment naming the operator of the
19 seized motor vehicle; and

20 (4) A bond posted to secure the release of the motor vehicle
21 under this subsection has not been previously ordered forfeited.

22 In the event a nondefendant motor vehicle owner who obtains
23 temporary possession of a seized motor vehicle pursuant to this
24 subsection does not return the motor vehicle on the day of the

1 forfeiture hearing as noticed by the prosecuting attorney or
2 otherwise violates a condition of pretrial release of the seized
3 motor vehicle as set forth in this subsection, the bond posted
4 shall be ordered forfeited and an order of seizure shall be issued
5 by the court. Additionally, a nondefendant motor vehicle owner or
6 lienholder who willfully violates any condition of pretrial release
7 may be held in civil or criminal contempt.

8 (k) (1) A nondefendant motor vehicle owner may file a petition
9 with the clerk of court seeking a pretrial determination that the
10 petitioner is an innocent owner. The clerk shall consider the
11 petition and make a determination as soon as may be feasible. At
12 any proceeding conducted pursuant to this subsection, the clerk is
13 not required to determine the issue of forfeiture, only the issue
14 of whether the petitioner is an innocent owner. If the clerk
15 determines that the petitioner is an innocent owner, the clerk
16 shall release the motor vehicle to the petitioner. The clerk shall
17 send a copy of the order authorizing or denying release of the
18 vehicle to the prosecuting attorney. An order issued under this
19 subsection finding that the petitioner failed to establish that the
20 petitioner is an innocent owner may be reconsidered by the court as
21 part of the forfeiture hearing.

22 (2) For purposes of this section an "innocent owner" is the
23 owner of the motor vehicle who: (A) Did not know or have reason to
24 know that the defendant had been previously arrested for impaired

1 driving; (B) reported the motor vehicle stolen; (C) is in the
2 business of renting motor vehicles and the defendant was not listed
3 as an authorized driver on the rental agreement and had no actual
4 knowledge that the defendant had been previously arrested for
5 impaired driving; or (D) is in the business of leasing motor
6 vehicles, held legal title to the vehicle as lessor at the time the
7 vehicle was seized and had no actual knowledge that the defendant
8 had been previously arrested for impaired driving.

9 (1) A defendant motor vehicle owner may file a petition with
10 the clerk of court seeking a pretrial determination that the
11 defendant had not been arrested on three previous occasions for
12 impaired driving. The clerk shall schedule a hearing in which the
13 underlying criminal charge is pending for a hearing to be held
14 within ten business days or as soon thereafter as may be feasible.
15 Notice of the hearing shall be given to the defendant and the
16 prosecuting attorney. The clerk shall forward a copy of the
17 petition to the prosecuting attorney for his or her review. If,
18 based on available information, the prosecuting attorney determines
19 that the defendant's motor vehicle is not subject to forfeiture, he
20 or she may note the state's consent to the release of the motor
21 vehicle on the petition and return the petition to the clerk of the
22 court who shall enter an order releasing the motor vehicle to the
23 defendant upon payment of all towing and storage charges incurred
24 as a result of the seizure and impoundment of the motor vehicle,

1 subject to the satisfactory proof of the identity of the defendant
2 as a motor vehicle owner and no hearing held. At any pretrial
3 hearing conducted pursuant to this subsection, the court is not
4 required to determine the issue of the underlying offense of
5 impaired driving only the existence of a prior drivers license
6 revocation as an impaired driving license revocation. Accordingly,
7 the state may not be required to prove the underlying offense of
8 impaired driving. An order issued under this subsection finding
9 that the defendant failed to establish that the defendant's license
10 was not revoked pursuant to an impaired driving license revocation
11 may be reconsidered by the court as part of the forfeiture hearing.

12 (m) (1) A lienholder may file a petition with the clerk of the
13 court requesting the court to order pretrial release of a seized
14 motor vehicle. The lienholder shall serve a copy of the petition on
15 all interested parties including the registered owner, the titled
16 owner and the prosecuting attorney. Upon ten days' prior notice of
17 the date, time, and location of the hearing sent by the lienholder
18 to all interested parties, a judge, after a hearing, shall order a
19 seized motor vehicle released to the lienholder conditioned upon
20 payment of all towing and storage costs incurred as a result of the
21 seizure and impoundment of the motor vehicle if the judge
22 determines, by the greater weight of the evidence, that:

23 (A) Default on the obligation secured by the motor vehicle has
24 occurred;

1 (B) As a consequence of default, the lienholder is entitled to
2 possession of the motor vehicle;

3 (C) The lienholder agrees to sell the motor vehicle in
4 accordance with the terms of its lien agreement. Upon sale of the
5 motor vehicle, the lienholder pays to the clerk of the court of the
6 county in which the driver was charged all proceeds from the sale,
7 less the amount of the lien in favor of the lienholder, and any
8 towing and storage costs paid by the lienholder;

9 (D) The lienholder agrees not to sell, give, or otherwise
10 transfer possession of the seized motor vehicle while the motor
11 vehicle is subject to forfeiture, or the forfeited motor vehicle
12 after the forfeiture hearing, to the defendant or the motor vehicle
13 owner; and

14 (E) The seized motor vehicle while the motor vehicle is
15 subject to forfeiture, or the forfeited motor vehicle after the
16 forfeiture hearing, had not previously been released to the
17 lienholder as a result of a prior seizure involving the same
18 defendant or motor vehicle owner.

19 (2) The clerk of the court may order a seized vehicle released
20 to the lienholder conditioned upon payment of all towing and
21 storage costs incurred as a result of the seizure and impoundment
22 of the motor vehicle at any time when all interested parties have,
23 in writing, waived any rights that they may have to notice and a
24 hearing, and the lienholder has complied with paragraph (D),

1 subdivision (1) of this subsection. A lienholder who refuses to
2 sell, give, or transfer possession of a seized motor vehicle while
3 the motor vehicle is subject to forfeiture, or a forfeited motor
4 vehicle after the forfeiture hearing, to: (A) The defendant; (B)
5 the motor vehicle owner who owned the motor vehicle immediately
6 prior to seizure pending the forfeiture hearing, or to forfeiture
7 after the forfeiture hearing; or (C) any person acting on the
8 behalf of the defendant or the motor vehicle owner is not liable
9 for damages arising out of such refusal. However, any subsequent
10 violation of the conditions of release by the lienholder shall be
11 punishable by civil or criminal contempt.

12 (n) In the event a motor vehicle is damaged incident to the
13 conduct of the defendant which gave rise to the defendant's arrest
14 and seizure of the motor vehicle pursuant to this section, the
15 prosecuting attorney is authorized to resolve the issue with the
16 insurance company and to compromise and accept settlement of any
17 claim for damages. Property insurance proceeds accruing to the
18 defendant, or other owner of the seized motor vehicle, shall be
19 paid by the responsible insurance company directly to the clerk of
20 the court in the county where the motor vehicle driver was charged.
21 If the motor vehicle is declared a total loss by the insurance
22 company liable for the damages to the motor vehicle, the clerk of
23 the court shall enter an order that the motor vehicle be released
24 to the insurance company upon payment into the court of all

1 insurance proceeds for damage to the motor vehicle after payment of
2 towing and storage costs and all valid liens. The clerk of the
3 court shall provide the Division of Motor Vehicles with a certified
4 copy of the order entered pursuant to this subsection, and the
5 division shall transfer title to the insurance company or to such
6 other person or entity as may be designated by the insurance
7 company. Insurance proceeds paid to the clerk of the court pursuant
8 to this subsection is subject to forfeiture and shall be disbursed
9 pursuant to further orders of the court. An affected motor vehicle
10 owner or lienholder who objects to any agreed upon settlement under
11 this subsection may file an independent claim with the insurance
12 company for any additional moneys believed owed. Notwithstanding
13 any other provision in this code to the contrary, nothing in this
14 section requires an insurance company to make payments in excess of
15 those required pursuant to its policy of insurance on the seized
16 motor vehicle.

17 (o) In order to avoid additional liability for towing and
18 storage costs pending resolution of the criminal proceedings of the
19 defendant, after expiration of ninety days from the date of
20 seizure, a motor vehicle having a fair market value of \$1,500 or
21 less may be sold. The motor vehicle, regardless of the fair market
22 value, may also be sold any time the outstanding towing and storage
23 costs exceed eighty-five percent of the fair market value of the
24 vehicle, or with the consent of all the motor vehicle owners. The

1 proceeds of any sale conducted pursuant to this subsection shall,
2 after the payment of outstanding towing and storage costs or
3 reimbursement of towing and storage costs paid by a person other
4 than the defendant, be deposited with the clerk of the court. If
5 the court determines that the motor vehicle is not subject to
6 forfeiture, the court shall order the proceeds held by the clerk to
7 be disbursed first to pay the sale, towing, and storage costs,
8 second to pay outstanding liens on the motor vehicle, and the
9 balance to be paid to the motor vehicle owners.

10 (p) At reasonable times, the entity charged with storing the
11 motor vehicle may permit owners of personal property not affixed to
12 the motor vehicle to retrieve those items from the motor vehicle,
13 provided satisfactory proof of ownership of the motor vehicle or
14 the items of personal property is presented to the storing entity.

15 (q) If the driver of a motor vehicle seized pursuant to this
16 section is convicted of an offense involving impaired driving, the
17 defendant shall be ordered to pay as restitution to the motor
18 vehicle owner or the lienholder the cost paid or owing for the
19 towing, storage, and sale of the motor vehicle to the extent the
20 costs were not covered by the proceeds from the forfeiture and sale
21 of the motor vehicle. In addition, a civil judgment for the costs
22 under this section in favor of the party to whom the restitution is
23 owed shall be docketed by the clerk of the court. If the defendant
24 is sentenced to an active term of confinement the civil judgment

1 shall become effective and be docketed when the defendant's
2 conviction becomes final. If the defendant is placed on probation,
3 the civil judgment in the amount found by a judge during the
4 probation revocation or termination hearing to be due shall become
5 effective and be docketed by the clerk when the defendant's
6 probation is revoked or terminated.

7 (r) Circuit court trials of impaired driving offenses
8 involving forfeitures of motor vehicles shall be scheduled on the
9 arresting officer's next court date or within thirty days of the
10 offense, whichever comes first. Once scheduled, the case shall not
11 be continued unless all of the following conditions are met:

12 (1) A written motion for continuance is filed with notice
13 given to the opposing party prior to the motion being heard;

14 (2) The judge makes a finding of a compelling reason for the
15 continuance; and

16 (3) The motion and finding are attached to the court case
17 record.

18 (s) Upon a determination of guilt, the issue of vehicle
19 forfeiture shall be heard by the judge immediately, or as soon
20 thereafter as feasible, and the judge shall issue the appropriate
21 orders. Should a defendant appeal the conviction, any party who has
22 not previously been heard on a petition for pretrial release under
23 this section or any party whose motor vehicle has not been the
24 subject of a forfeiture hearing may be heard on a petition for

1 pretrial release. Subsection (j) of this section also applies to
2 seized motor vehicles pending trial. Where a motor vehicle was
3 released pursuant to subsection (j) of this section pending trial
4 in circuit court, the release of the motor vehicle continues, and
5 the terms and conditions of the original bond remain the same as
6 those required for the initial release of the motor vehicle under
7 subsection (j) of this section, pending the resolution of the
8 underlying offense involving impaired driving in circuit court.

9 (t) Any order issued pursuant to this section authorizing the
10 release of a seized vehicle shall require the payment of all towing
11 and storage charges incurred as a result of the seizure and
12 impoundment of the motor vehicle. This requirement may not be
13 waived.

NOTE: The purpose of this bill is to permit to the seizure, impoundment and forfeiture of the motor vehicles of drivers who have been arrested on at least four occasions for impaired driving. The bill defines impaired driving. The bill sets forth the procedure to be used. The bill requires notice, hearings and orders. The bill provides for lienholders, innocent owners and others. The bill requires bonds to be posted. The bill permits petitions to be filed. The bill sets forth damage and liability considerations. The bill permits the sale of an impounded vehicle under certain circumstances. The bill also defines "impaired driving" and "innocent owner."

This section is new; therefore, it has been completely underscored.