

1 **H. B. 4248**

2  
3 (By Delegate Howell (By Request))

4 [Introduced January 21, 2014; referred to the  
5 Committee on the Judiciary then Finance.]

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

8  
9 A BILL to repeal §17C-5-2b of the Code of West Virginia, 1931, as  
10 amended; and to amend and reenact §17C-5-2 of said code,  
11 relating to requiring a criminal penalty for all first  
12 offenses of driving under the influence of alcohol, controlled  
13 substances or drugs; and repealing the program which defers  
14 proceedings for certain first offenses upon condition of  
15 participation in motor vehicle alcohol test and lock program.

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

17 That §17C-5-2b of the Code of West Virginia, 1931, as amended,  
18 be repealed; and that §17C-5-2 of said code be amended and  
19 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, which  
11 act or failure proximately causes the death of any person within one  
12 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;

24 (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;

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, which  
7 act or failure proximately causes the death of any person within one  
8 year next following the act or failure, is guilty of a misdemeanor  
9 and, upon conviction thereof, shall be confined in jail for not less  
10 than ninety days nor more than one year and shall be fined not less  
11 than \$500 nor more than \$1,000.

12 (c) Any person who:

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

14 (A) Is under the influence of alcohol;

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

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

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

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

21 (2) While driving does any act forbidden by law or fails to  
22 perform any duty imposed by law in the driving of the vehicle, which  
23 act or failure proximately causes bodily injury to any person other  
24 than himself or herself, is guilty of a misdemeanor and, upon

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

5 (d) Any person who:

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

7 (A) Is under the influence of alcohol;

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

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

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

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

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

21 (e) Any person who drives a vehicle in this state while he or  
22 she has an alcohol concentration in his or her blood of fifteen  
23 hundredths of one percent or more, by weight, is guilty of a  
24 misdemeanor and, upon conviction thereof, shall be confined in jail

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

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

16 (g) Any person who:

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

19 (A) Is under the influence of alcohol;

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

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

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

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

1 hundredths of one percent or more, by weight;

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

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

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

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

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

13 (j) 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) The person while driving has on or within the motor vehicle  
23 one or more other persons who are unemancipated minors who have not  
24 reached their sixteenth birthday is guilty of a misdemeanor and,

1 upon conviction thereof, shall be confined in jail for not less than  
2 two days nor more than twelve months, which jail term is to include  
3 actual confinement of not less than forty-eight hours and shall be  
4 fined not less than \$200 nor more than \$1,000.

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

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

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

21 (1) Any conviction under the provisions of subsection (a), (b),  
22 (c), (d), (e), (f) or (g) of this section or under a prior enactment  
23 of this section for an offense which occurred within the ten-year  
24 period immediately preceding the date of arrest in the current

1 proceeding;

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

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

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

1 imposed pursuant to section two-b of this article.

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

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

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

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

NOTE: The purpose of this bill is to require a criminal penalty for a all first offense DUIs. It repeals §17C-5-2b which defers proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program.

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