

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2183

BY DELEGATES SHOTT, STEELE, HARSHBARGER AND

WILSON

[Originating in the Committee on the Judiciary,

January 11, 2019.]

1 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, clarifying
2 that the offense of driving under the influence of alcohol, controlled substances, or drugs
3 must, in instances not causing bodily injury or death, be for circumstances where the
4 operator is upon a public highway, or is on a private road either before or after entering or
5 exiting a public highway.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) *Definitions*—

2 (1) “Impaired state” means a person:

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 or inhalant substance;

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

8 (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or
9 more, by weight.

10 (2) “Bodily Injury” means injury that causes substantial physical pain, illness or any
11 impairment of physical condition.

12 (3) “Serious Bodily Injury” means bodily injury that creates a substantial risk of death, that
13 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or
14 impairment of the function of any bodily organ.

15 (b) Any person who drives a vehicle in this state while he or she is in an impaired state
16 and such impaired state proximately causes the death of any person is guilty of a felony and,
17 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three

18 nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000: *Provided,*
19 That any death charged under this subsection must occur within one year of the offense.

20 (c) Any person who drives a vehicle in this state while he or she is in an impaired state
21 and such impaired state proximately causes serious bodily injury to any person other than himself
22 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
23 correctional facility for not less than two nor more than 10 years and shall be fined not less than
24 \$1,000 nor more than \$3,000.

25 (d) Any person who drives a vehicle in this state while he or she is in an impaired state
26 and such impaired state proximately causes a bodily injury to any person other than himself or
27 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
28 less than one day more than one year and shall be fined not less than \$200 nor more than \$1,000:
29 *Provided,* That such jail term shall include actual confinement of not less than 24 hours: *Provided,*
30 *however,* That a person sentenced pursuant to this subsection shall receive credit for any period
31 of actual confinement he or she served upon arrest for the subject offense.

32 (e) Any person who drives a vehicle on any public highway or private road in this state: (i)
33 While he or she is in an impaired state or (ii) while he or she is in an impaired state but has an
34 alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight,
35 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six
36 months and shall be fined not less than \$100 nor more than \$500: *Provided,* That a person
37 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
38 or she served upon arrest for the subject offense.

39 (f) Any person who drives a vehicle on any public highway or private road in this state
40 while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one
41 percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be
42 confined in jail for not less than two days nor more than six months, which jail term is to include
43 actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than

44 \$1,000. A person sentenced pursuant to this subdivision shall receive credit for any period of
45 actual confinement he or she served upon arrest for the subject offense.

46 (g) Any person who, being a habitual user of narcotic drugs or amphetamine or any
47 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of
48 a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day
49 nor more than six months, which jail term is to include actual confinement of not less than 24
50 hours, and shall be fined not less than \$100 nor more than \$500. A person sentenced pursuant
51 to this subdivision shall receive credit for any period of actual confinement he or she served upon
52 arrest for the subject offense.

53 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway
54 or private road in this state by any other person who is in an impaired state is guilty of a
55 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months
56 and shall be fined not less than \$100 nor more than \$500.

57 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway
58 or private road in this state by any other person who is a habitual user of narcotic drugs or
59 amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof,
60 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor
61 more than \$500.

62 (j) Any person under the age of 21 years who drives a vehicle on any public highway or
63 private road in this state while he or she has an alcohol concentration in his or her blood of two
64 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by
65 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction
66 thereof, shall be fined not less than \$25 nor more than \$100. For a second or subsequent offense
67 under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall
68 be confined in jail for 24 hours and shall be fined not less than \$100 nor more than \$500. A person
69 who is charged with a first offense under the provisions of this subsection may move for a

70 continuance of the proceedings, from time to time, to allow the person to participate in the Motor
71 Vehicle Alcohol Test and Lock Program as provided in §17C-5a-3a of this code. Upon successful
72 completion of the program, the court shall dismiss the charge against the person and expunge
73 the person's record as it relates to the alleged offense. In the event the person fails to successfully
74 complete the program, the court shall proceed to an adjudication of the alleged offense. A motion
75 for a continuance under this subsection may not be construed as an admission or be used as
76 evidence.

77 A person arrested and charged with an offense under the provisions of this subsection or
78 subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section may not also be charged with an offense
79 under this subsection arising out of the same transaction or occurrence.

80 (k) Any person who drives a vehicle on any public highway or private road in this state
81 while he or she is in an impaired state and has within the vehicle one or more other persons who
82 are unemancipated minors who have not yet reached their sixteenth birthday is guilty of a
83 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
84 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000: *Provided*, That
85 such jail term shall include actual confinement of not less than 48 hours: *Provided, however*, That
86 a person sentenced pursuant to this subdivision shall receive credit for any period of actual
87 confinement he or she served upon arrest for the subject offense.

88 (l) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section,
89 for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof,
90 shall be confined in jail for not less than six months nor more than one year and the court may, in
91 its discretion, impose a fine of not less than \$1,000 nor more than \$3,000.

92 (m) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section,
93 for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction
94 thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five

95 years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than
96 \$5,000.

97 (n) For purposes of subsections (l) and (m) of this section relating to second, third and
98 subsequent offenses, the following events shall be regarded as offenses under this section:

99 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g) or (h) of this
100 section or under a prior enactment of this section for an offense which occurred within the 10-year
101 period immediately preceding the date of arrest in the current proceeding;

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

106 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for
107 violation of subsection (e) of this section, which violation occurred within the 10-year period
108 immediately preceding the date of arrest in the current proceeding.

109 (o) A person may be charged in a warrant or indictment or information for a second or
110 subsequent offense under this section if the person has been previously arrested for or charged
111 with a violation of this section which is alleged to have occurred within the applicable time period
112 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the
113 charges for the alleged previous offense. In that case, the warrant or indictment or information
114 must set forth the date, location and particulars of the previous offense or offenses. No person
115 may be convicted of a second or subsequent offense under this section unless the conviction for
116 the previous offense has become final, or the person has previously had a period of conditional
117 probation imposed pursuant to §17C-5-2b of this article.

118 (p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f) or
119 (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this
120 section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not

121 constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h) or (i)
122 of this section.

123 (q) For purposes of this section, the term “controlled substance” has the meaning ascribed
124 to it in chapter sixty-a of this code.

125 (r) The sentences provided in this section upon conviction for a violation of this article are
126 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
127 the provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of
128 one year or less for a first offense under this section: *Provided, however*, That the court may
129 impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated
130 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et*
131 *seq.* article eleven-b of said chapter may be used as an alternative sentence to any period of
132 incarceration required by this section for a first or subsequent offense: *Provided further*, That for
133 any period of home incarceration ordered for a person convicted of second offense under this
134 section, electronic monitoring shall be required for no fewer than five days of the total period of
135 home confinement ordered and the offender may not leave home for those five days
136 notwithstanding the provisions of §62-11B-5 of this code: *And provided further*, That for any period
137 of home incarceration ordered for a person convicted of a third or subsequent violation of this
138 section, electronic monitoring shall be included for no fewer than 10 days of the total period of
139 home confinement ordered and the offender may not leave home for those 10 days
140 notwithstanding §62-11B-5 of this code.

141 (s) For purposes of this section, the words “private road” do not include private roads in
142 any circumstances where the operator or driver is operating the vehicle on his or her own property
143 and has not left, or does not intend to leave, said property to drive upon any public highway.

NOTE: The purpose of this bill is to make clear that a charge of DUI may only be brought against an individual operating a vehicle on public highways or on private roads before or after entering or exiting a public highway, except in instances involving bodily injury or death.

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