

Veto

FILED

2006 APR -5 P 6: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006

ENROLLED

House Bill No. 4353

(By Delegates Staton, Amores, Craig and Ellem)

Passed March 11, 2006

In Effect Ninety Days from Passage

HB 4353 S

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SECRETARY OF STATE

E N R O L L E D

H. B. 4353

(BY DELEGATES STATON, AMORES, CRAIG AND ELLEM)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-1 of said code, all relating to criminal and administrative procedures related to persons charged with driving under the influence of alcohol, controlled substance or drugs; providing for enhanced criminal penalties for second and subsequent offense of driving under the influence of alcohol, controlled substance or drugs with a minor under the age of sixteen in the vehicle; relating to initiation of administrative procedures; requiring law enforcement officers have a valid complaint, signed by a magistrate or municipal judge, with a showing of probable cause before reporting said offense to the commissioner of the department of motor vehicles; and authorizing notice to Division of Motor Vehicles within forty-eight hours to be sent of complaint issuing.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) Any person who:

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

3 (A) Is under the influence of alcohol; or

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

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

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; and

10 (2) When so driving does any act forbidden by law or fails
11 to perform any duty imposed by law in the driving of the
12 vehicle, which act or failure proximately causes the death of
13 any person within one year next following the act or failure;
14 and

15 (3) Commits the act or failure in reckless disregard of the
16 safety of others, and when the influence of alcohol, controlled
17 substances or drugs is shown to be a contributing cause to the
18 death, is guilty of a felony and, upon conviction thereof, shall
19 be imprisoned in a state correctional facility for not less than
20 one nor more than ten years and shall be fined not less than one
21 thousand dollars nor more than three thousand dollars.

22 (b) Any person who:

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

24 (A) Is under the influence of alcohol; or

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

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

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

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

31 (2) When so driving does any act forbidden by law or fails
32 to perform any duty imposed by law in the driving of the
33 vehicle, which act or failure proximately causes the death of
34 any person within one year next following the act or failure, is
35 guilty of a misdemeanor and, upon conviction thereof, shall be
36 confined in jail for not less than ninety days nor more than one
37 year and shall be fined not less than five hundred dollars nor
38 more than one thousand dollars.

39 (c) Any person who:

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

41 (A) Is under the influence of alcohol; or

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

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

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

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

48 (2) When so driving does any act forbidden by law or fails
49 to perform any duty imposed by law in the driving of the
50 vehicle, which act or failure proximately causes bodily injury
51 to any person other than himself or herself, is guilty of a
52 misdemeanor and, upon conviction thereof, shall be confined in
53 jail for not less than one day nor more than one year, which jail
54 term is to include actual confinement of not less than
55 twenty-four hours, and shall be fined not less than two hundred
56 dollars nor more than one thousand dollars.

57 (d) Any person who:

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

59 (A) Is under the influence of alcohol; or

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

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

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

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

66 (2) Is guilty of a misdemeanor and, upon conviction
67 thereof, shall be confined in jail for not less than one day nor
68 more than six months, which jail term is to include actual
69 confinement of not less than twenty-four hours, and shall be
70 fined not less than one hundred dollars nor more than five
71 hundred dollars.

72 (e) Any person who, being an habitual user of narcotic
73 drugs or amphetamine or any derivative thereof, drives a
74 vehicle in this state, is guilty of a misdemeanor and, upon
75 conviction thereof, shall be confined in jail for not less than one

76 day nor more than six months, which jail term is to include
77 actual confinement of not less than twenty-four hours, and shall
78 be fined not less than one hundred dollars nor more than five
79 hundred dollars.

80 (f) Any person who:

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

83 (A) Is under the influence of alcohol; or

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

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

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

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

90 (2) Is guilty of a misdemeanor and, upon conviction
91 thereof, shall be confined in jail for not more than six months
92 and shall be fined not less than one hundred dollars nor more
93 than five hundred dollars.

94 (g) Any person who knowingly permits his or her vehicle
95 to be driven in this state by any other person who is an habitual
96 user of narcotic drugs or amphetamine or any derivative
97 thereof, is guilty of a misdemeanor and, upon conviction
98 thereof, shall be confined in jail for not more than six months
99 and shall be fined not less than one hundred dollars nor more
100 than five hundred dollars.

101 (h) Any person under the age of twenty-one years who
102 drives a vehicle in this state while he or she has an alcohol
103 concentration in his or her blood of two hundredths of one

104 percent or more, by weight, but less than eight hundredths of
105 one percent, by weight, for a first offense under this subsection,
106 is guilty of a misdemeanor and, upon conviction thereof, shall
107 be fined not less than twenty-five dollars nor more than one
108 hundred dollars. For a second or subsequent offense under this
109 subsection, the person is guilty of a misdemeanor and, upon
110 conviction thereof, shall be confined in jail for twenty-four
111 hours, and shall be fined not less than one hundred dollars nor
112 more than five hundred dollars. A person who is charged with
113 a first offense under the provisions of this subsection may move
114 for a continuance of the proceedings, from time to time, to
115 allow the person to participate in the vehicle alcohol test and
116 lock program as provided in section three-a, article five-a of
117 this chapter. Upon successful completion of the program, the
118 court shall dismiss the charge against the person and expunge
119 the person's record as it relates to the alleged offense. In the
120 event the person fails to successfully complete the program, the
121 court shall proceed to an adjudication of the alleged offense. A
122 motion for a continuance under this subsection may not be
123 construed as an admission or be used as evidence.

124 A person arrested and charged with an offense under the
125 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (I) of
126 this section may not also be charged with an offense under this
127 subsection arising out of the same transaction or occurrence.

128 (i) Any person who:

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

130 (A) Is under the influence of alcohol; or

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

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

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

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

137 (2) The person when so driving has on or within the motor
138 vehicle one or more other persons who are unemancipated
139 minors who have not reached their sixteenth birthday, is guilty
140 of a misdemeanor and, upon conviction thereof, shall be
141 confined in jail for not less than two days nor more than twelve
142 months, which jail term is to include actual confinement of not
143 less than forty-eight hours, and shall be fined not less than two
144 hundred dollars nor more than one thousand dollars.

145 (j) A person violating any provision of subsection (b), (c),
146 (d), (e), (f), (g) or (i) of this section, for the second offense
147 under this section, is guilty of a misdemeanor and, upon
148 conviction thereof, shall be confined in jail for not less than six
149 months nor more than one year, and the court may, in its
150 discretion, impose a fine of not less than one thousand dollars
151 nor more than three thousand dollars: *Provided*, That if a person
152 violates subsection (I) for the second offense under this section,
153 and such person has previously been convicted of violation of
154 subsection (I), then such person shall be guilty of a felony and,
155 upon conviction thereof, shall be imprisoned in a state correc-
156 tional facility for not less than one nor more than three years,
157 and the court may, in its discretion, impose a fine of not less
158 than three thousand dollars nor more than five thousand dollars.

159 (k) A person violating any provision of subsection (b), (c),
160 (d), (e), (f), (g) or (i) of this section, for the third or any
161 subsequent offense under this section, is guilty of a felony and,
162 upon conviction thereof, shall be imprisoned in a state correc-
163 tional facility for not less than one nor more than three years,
164 and the court may, in its discretion, impose a fine of not less

165 than three thousand dollars nor more than five thousand dollars:
166 *Provided*, That if a person violates subsection (I) for the third
167 or subsequent offense under this section, and such person has
168 previously been convicted of violation of subsection(I), then
169 such person shall be guilty of a felony and, upon conviction
170 thereof, shall be imprisoned in a state correctional facility for
171 not less than three nor more than ten years, and the court may,
172 in its discretion, impose a fine of not less than three thousand
173 dollars nor more than five thousand dollars.

174 (l) For purposes of subsections (j) and (k) of this section
175 relating to second, third and subsequent offenses, the following
176 types of convictions are to be regarded as convictions under this
177 section:

178 (1) Any conviction under the provisions of subsection (a),
179 (b), (c), (d), (e) or (f) of this section or under a prior enactment
180 of this section for an offense which occurred within the ten-year
181 period immediately preceding the date of arrest in the current
182 proceeding;

183 (2) Any conviction under a municipal ordinance of this
184 state or any other state or a statute of the United States or of any
185 other state of an offense which has the same elements as an
186 offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of
187 this section, which offense occurred within the ten-year period
188 immediately preceding the date of arrest in the current proceed-
189 ing.

190 (m) A person may be charged in a warrant or indictment or
191 information for a second or subsequent offense under this
192 section if the person has been previously arrested for or charged
193 with a violation of this section which is alleged to have oc-
194 curred within the applicable time period for prior offenses,
195 notwithstanding the fact that there has not been a final adjudica-
196 tion of the charges for the alleged previous offense. In that case,

197 the warrant or indictment or information must set forth the date,
198 location and particulars of the previous offense or offenses. No
199 person may be convicted of a second or subsequent offense
200 under this section unless the conviction for the previous offense
201 has become final.

202 (n) The fact that any person charged with a violation of
203 subsection (a), (b), (c), (d) or (e) of this section, or any person
204 permitted to drive as described under subsection (f) or (g) of
205 this section, is or has been legally entitled to use alcohol, a
206 controlled substance or a drug does not constitute a defense
207 against any charge of violating subsection (a), (b), (c), (d), (e),
208 (f) or (g) of this section.

209 (o) For purposes of this section, the term "controlled
210 substance" has the meaning ascribed to it in chapter sixty-a of
211 this code.

212 (p) The sentences provided herein upon conviction for a
213 violation of this article are mandatory and may not be subject
214 to suspension or probation: *Provided*, That the court may apply
215 the provisions of article eleven-a, chapter sixty-two of this code
216 to a person sentenced or committed to a term of one year or less
217 for a first offense under this section. An order for home
218 detention by the court pursuant to the provisions of article
219 eleven-b of said chapter may be used as an alternative sentence
220 to any period of incarceration required by this section for a first
221 or subsequent offense: *Provided, however*, That for any period
222 of home incarceration ordered for a person convicted of second
223 offense under this section, electronic monitoring shall be
224 required for no fewer than five days of the total period of home
225 confinement ordered and the offender may not leave home for
226 those five days notwithstanding the provisions of section five,
227 article eleven-b, chapter sixty-two of this code: *Provided*
228 *further*, That for any period of home incarceration ordered for
229 a person convicted of a third or subsequent violation of this

230 section, electronic monitoring shall be included for no fewer
231 than ten days of the total period of home confinement ordered
232 and the offender may not leave home for those ten days
233 notwithstanding section five, article eleven-b, chapter sixty-
234 two of this code.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER
THE INFLUENCE OF ALCOHOL, CONTROLLED
SUBSTANCES OR DRUGS.**

**§17C-5A-1. Implied consent to administrative procedure; revoca-
tion for driving under the influence of alcohol,
controlled substances or drugs or refusal to
submit to secondary chemical test.**

1 (a) Any person who is licensed to operate a motor vehicle
2 in this state and who drives a motor vehicle in this state shall be
3 deemed to have given his or her consent by the operation
4 thereof, subject to the provisions of this article, to the procedure
5 set forth in this article for the determination of whether his or
6 her license to operate a motor vehicle in this state should be
7 revoked because he or she did drive a motor vehicle while
8 under the influence of alcohol, controlled substances or drugs,
9 or combined influence of alcohol or controlled substances or
10 drugs, or did drive a motor vehicle while having an alcohol
11 concentration in his or her blood of eight hundredths of one
12 percent or more, by weight, or did refuse to submit to any
13 designated secondary chemical test, or did drive a motor vehicle
14 while under the age of twenty-one years with an alcohol
15 concentration in his or her blood of two hundredths of one
16 percent or more, by weight, but less than eight hundredths of
17 one percent, by weight.

18 (b) Any law-enforcement officer arresting a person for an
19 offense described in section two, article five of this chapter or
20 for an offense described in a municipal ordinance which has the

21 same elements as an offense described in said section shall
22 report to the commissioner of the division of motor vehicles by
23 written statement: *Provided*, That the officer shall have a valid
24 criminal complaint, signed by a magistrate or municipal judge,
25 with a determination of probable cause, before reporting said
26 offense to the commissioner of the department of motor
27 vehicles. The arresting officer shall, within forty-eight hours of
28 the issuance of the criminal complaint provide a statement to
29 the commissioner reflecting the name and address of the subject
30 of the criminal complaint. The report shall include the specific
31 offense with which the person is charged and, if applicable, a
32 copy of the results of any secondary tests of blood, breath or
33 urine. The signing of the statement required to be signed by this
34 subsection shall constitute an oath or affirmation by the person
35 signing the statement that the statements contained therein are
36 true and that any copy filed is a true copy. The statement shall
37 contain upon its face a warning to the officer signing that to
38 willfully sign a statement containing false information concern-
39 ing any matter or thing, material or not material, is false
40 swearing and is a misdemeanor.

41 (c) If, upon examination of the written statement of the
42 officer and the tests results described in subsection (b) of this
43 section, the commissioner shall determine that a person was
44 arrested for an offense described in section two, article five of
45 this chapter or for an offense described in a municipal ordi-
46 nance which has the same elements as an offense described in
47 said section, and that the results of any secondary test or tests
48 indicate that at the time the test or tests were administered the
49 person had, in his or her blood, an alcohol concentration of
50 eight hundredths of one percent or more, by weight, or at the
51 time the person was arrested he or she was under the influence
52 of alcohol, controlled substances or drugs, the commissioner
53 shall make and enter an order revoking the person's license to
54 operate a motor vehicle in this state. If the results of the tests
55 indicate that at the time the test or tests were administered the

56 person was under the age of twenty- one years and had an
57 alcohol concentration in his or her blood of two hundredths of
58 one percent or more, by weight, but less than eight hundredths
59 of one percent, by weight, the commissioner shall make and
60 enter an order suspending the person's license to operate a
61 motor vehicle in this state. A copy of the order shall be for-
62 warded to the person by registered or certified mail, return
63 receipt requested, and shall contain the reasons for the revoca-
64 tion or suspension and describe the applicable revocation or
65 suspension periods provided for in section two of this article.
66 No revocation or suspension shall become effective until ten
67 days after receipt of a copy of the order.

68 (d) Any law-enforcement officer taking a child into custody
69 under the provisions of section six-a, article five of this chapter
70 who has reasonable cause to believe that the child, at the time
71 of driving the motor vehicle, had an alcohol concentration in his
72 or her blood of two hundredths of one percent or more, by
73 weight, or that the act of the child in driving the motor vehicle
74 was such that it would provide grounds for arrest for an offense
75 defined under the provisions of section two of said article if the
76 child were an adult, shall report to the commissioner of the
77 division of motor vehicles by written statement within forty-
78 eight hours the name and address of the child.

79 (e) If applicable, the report shall include a description of the
80 specific offense with which the child could have been charged
81 if the child were an adult, and a copy of the results of any
82 secondary tests of blood, breath or urine. The signing of the
83 statement required to be signed by this subsection shall consti-
84 tute an oath or affirmation by the person signing such statement
85 that the statements contained therein are true and that any copy
86 filed is a true copy. Such statement shall contain upon its face
87 a warning to the officer signing that to willfully sign a state-
88 ment containing false information concerning any matter or
89 thing, material or not material, is false swearing and is a misdemeanor.

90 (f) Upon examination of the written statement of the officer
91 and any test results described in subsection (d) of this section,
92 if the commissioner determines that the results of the tests
93 indicate that at the time the test or tests were administered the
94 child had, in his or her blood, an alcohol concentration of two
95 hundredths of one percent or more, by weight, but also deter-
96 mines that the act of the child in driving the motor vehicle was
97 not such that it would provide grounds for arrest for an offense
98 defined under the provisions of subsection (a), (b), (c), (d), (e),
99 (f) or (g), section two, article five of this chapter if the child
100 were an adult, the commissioner shall make and enter an order
101 suspending the child's license to operate a motor vehicle in this
102 state. If the commissioner determines that the act of the child in
103 driving the motor vehicle was such that it would provide
104 grounds for arrest for an offense defined under the provisions
105 of subsection (a), (b), (c), (d), (e), (f) or (g), section two, article
106 five of this chapter if the child were an adult, the commissioner
107 shall make and enter an order revoking the child's license to
108 operate a motor vehicle in this state. A copy of such order shall
109 be forwarded to the child by registered or certified mail, return
110 receipt requested, and shall contain the reasons for the suspen-
111 sion or revocation and describe the applicable suspension or
112 revocation periods provided for in section two of this article.
113 No suspension or revocation shall become effective until ten
114 days after receipt of a copy of such order.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

C. Randy White
Chairman Senate Committee

W. Boy
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Russell Ekhnas
Clerk of the Senate

Suezy M. Seal
Clerk of the House of Delegates

Carl By
President of the Senate

Robert J.
Speaker of the House of Delegates

The within *disappeared* this the *5th*
day of *April*, 2006.

Paul Hancock
Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time 10:40am