

1 **H. B. 2747**

2
3 (By Delegates Lawrence, Hunt, Marshall, Brown,
4 Frazier, Skaff, Ferro, Pino, Ellem
5 and Smith)
6

7 [Introduced January 21, 2011; referred to the
8 Committee on the Judiciary then Finance.]
9

10 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,
11 1931, as amended, relating to creating a felony offense for
12 causing serious bodily injury to another person while driving
13 a vehicle while under the influence of alcohol, controlled
14 substances or drugs; and establishing penalties for first and
15 subsequent violations.

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

17 That §17C-5-2 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

20 **§17C-5-2. Driving under influence of alcohol, controlled**
21 **substances or drugs; penalties.**

22 (a) Any person who:

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

24 (A) Is under the influence of alcohol;

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

26 (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; or

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,
7 which act or failure proximately causes the death of any person
8 within one year next following the act or failure; and

9 (3) Commits the act or failure in reckless disregard of the
10 safety of others and when the influence of alcohol, controlled
11 substances or drugs is shown to be a contributing cause to the
12 death, is guilty of a felony and, upon conviction thereof, shall be
13 imprisoned in a state correctional facility for not less than two
14 years nor more than ten years and shall be fined not less than
15 \$1,000 nor more than \$3,000.

16 (b) Any person who:

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

18 (A) Is under the influence of alcohol;

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

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

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

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

25 (2) While driving does any act forbidden by law or fails to

1 perform any duty imposed by law in the driving of the vehicle,
2 which act or failure proximately causes the death of any person
3 within one year next following the act or failure, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be confined in jail
5 for not less than ninety days nor more than one year and shall be
6 fined not less than \$500 nor more than \$1,000.

7 (c) 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; and

16 (2) While driving does any act forbidden by law or fails to
17 perform any duty imposed by law in the driving of the vehicle,
18 which act or failure proximately causes bodily injury to any person
19 other than himself or herself, is guilty of a misdemeanor and, upon
20 conviction thereof, shall be confined in jail for not less than one
21 day nor more than one year, which jail term is to include actual
22 confinement of not less than twenty-four hours, and shall be fined
23 not less than \$200 nor more than \$1,000.

24 (d) Any person who:

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

- 1 (A) Is under the influence of alcohol;
- 2 (B) Is under the influence of any controlled substance;
- 3 (C) Is under the influence of any other drug;
- 4 (D) Is under the combined influence of alcohol and any
5 controlled substance or any other drug; or
- 6 (E) Has an alcohol concentration in his or her blood of eight
7 hundredths of one percent or more, by weight, but less than fifteen
8 hundredths of one percent, by weight;
- 9 (2) Is guilty of a misdemeanor and, upon conviction thereof,
10 except as provided in section two-b of this article, shall be
11 confined in jail for up to six months and shall be fined not less
12 than \$100 nor more than \$500. A person sentenced pursuant to this
13 subdivision shall receive credit for any period of actual
14 confinement he or she served upon arrest for the subject offense.
- 15 (e) Any person who drives a vehicle in this state while he or
16 she has an alcohol concentration in his or her blood of fifteen
17 hundredths of one percent or more, by weight, is guilty of a
18 misdemeanor and, upon conviction thereof, shall be confined in jail
19 for not less than two days nor more than six months, which jail
20 term is to include actual confinement of not less than twenty-four
21 hours, and shall be fined not less than \$200 nor more than \$1,000.
22 A person sentenced pursuant to this subdivision shall receive
23 credit for any period of actual confinement he or she served upon
24 arrest for the subject offense.
- 25 (f) Any person who, being an habitual user of narcotic drugs

1 or amphetamine or any derivative thereof, drives a vehicle in this
2 state is guilty of a misdemeanor and, upon conviction thereof,
3 shall be confined in jail for not less than one day nor more than
4 six months, which jail term is to include actual confinement of not
5 less than twenty-four hours, and shall be fined not less than \$100
6 nor more than \$500. A person sentenced pursuant to this
7 subdivision shall receive credit for any period of actual
8 confinement he or she served upon arrest for the subject offense.

9 (g) Any person who:

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

12 (A) Is under the influence of alcohol;

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

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

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

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

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

22 (h) Any person who knowingly permits his or her vehicle to be
23 driven in this state by any other person who is an habitual user of
24 narcotic drugs or amphetamine or any derivative thereof is guilty
25 of a misdemeanor and, upon conviction thereof, shall be confined in

1 jail for not more than six months and shall be fined not less than
2 \$100 nor more than \$500.

3 (i) Any person under the age of twenty-one years who drives a
4 vehicle in this state while he or she has an alcohol concentration
5 in his or her blood of two hundredths of one percent or more, by
6 weight, but less than eight hundredths of one percent, by weight,
7 for a first offense under this subsection is guilty of a
8 misdemeanor and, upon conviction thereof, shall be fined not less
9 than \$25 nor more than \$100. For a second or subsequent offense
10 under this subsection, the person is guilty of a misdemeanor and,
11 upon conviction thereof, shall be confined in jail for twenty-four
12 hours and shall be fined not less than \$100 nor more than \$500. A
13 person who is charged with a first offense under the provisions of
14 this subsection may move for a continuance of the proceedings, from
15 time to time, to allow the person to participate in the Motor
16 Vehicle Alcohol Test and Lock Program as provided in section three-
17 a, article five-a of this chapter. Upon successful completion of
18 the program, the court shall dismiss the charge against the person
19 and expunge the person's record as it relates to the alleged
20 offense. In the event the person fails to successfully complete
21 the program, the court shall proceed to an adjudication of the
22 alleged offense. A motion for a continuance under this subsection
23 may not be construed as an admission or be used as evidence.
24 A person arrested and charged with an offense under the provisions
25 of this subsection or subsection (a), (b), (c), (d), (e), (f), (g)

1 or (h) of this section may not also be charged with an offense
2 under this subsection arising out of the same transaction or
3 occurrence.

4 (j) Any person who:

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

6 (A) Is under the influence of alcohol;

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

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

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

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

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

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

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

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

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

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

23 (3) Any period of conditional probation imposed pursuant
24 section two-b of this article for violation of subsection (d) of
25 this article, which violation occurred within the ten-year period

1 immediately preceding the date of arrest in the current proceeding.

2 (n) A person may be charged in a warrant or indictment or
3 information for a second or subsequent offense under this section
4 if the person has been previously arrested for or charged with a
5 violation of this section which is alleged to have occurred within
6 the applicable time period for prior offenses, notwithstanding the
7 fact that there has not been a final adjudication of the charges
8 for the alleged previous offense. In that case, the warrant or
9 indictment or information must set forth the date, location and
10 particulars of the previous offense or offenses. No person may be
11 convicted of a second or subsequent offense under this section
12 unless the conviction for the previous offense has become final, or
13 the person has previously had a period of conditional probation
14 imposed pursuant to section two-b of this article.

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

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

25 (q) The sentences provided in this section upon conviction for

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

24 (r) Any person who:

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

- 1 (A) Is under the influence of alcohol;
2 (B) Is under the influence of any controlled substance;
3 (C) Is under the influence of any other drug;
4 (D) Is under the combined influence of alcohol and any
5 controlled substance or any other drug; or
6 (E) Has an alcohol concentration in his or her blood of eight
7 hundredths of one percent or more, by weight; and
- 8 (2) While driving does any act forbidden by law or fails to
9 perform any duty imposed by law in the driving of the vehicle,
10 which act or failure proximately causes serious bodily injury to
11 any person other than himself or herself, is guilty of a felony
12 and, upon conviction thereof, shall be imprisoned in a state
13 correctional facility for not less than one nor more than three
14 years and the court may, in its discretion, impose a fine of not
15 less than \$3,000 nor more than \$5,000.
- 16 (3) A person convicted under this subsection of a second or
17 subsequent offense is guilty of a felony and, upon conviction
18 thereof, shall be imprisoned in a state correctional facility for
19 not less than three nor more than five years and the court may, in
20 its discretion, impose a fine of not less than \$3,000 nor more than
21 \$5,000.
- 22 (4) For purposes of this subsection, "serious bodily injury"
23 means bodily injury which creates a substantial risk of death,
24 which causes serious or prolonged disfigurement, prolonged
25 impairment of health or prolonged loss or impairment of the

1 function of any bodily organ.

NOTE: The purpose of this bill is to create a felony offense for causing serious bodily injury to another person while driving a vehicle while under the influence of alcohol, controlled substances or drugs, and to establish penalties for first and subsequent violations.

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