

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 95**

4 (By Senators Miller and Beach)

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6 [Originating in the Committee on Transportation and  
7 Infrastructure; reported February 12, 2014.]  
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11 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,  
12 1931, as amended, relating to making it a felony to drive a  
13 vehicle while under the influence of alcohol, controlled  
14 substance or other drug and recklessly cause serious bodily  
15 injury to another person; and establishing and increasing  
16 penalties for first and subsequent violations of certain  
17 offenses.

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

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

21 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

22 **§17C-5-2. Driving under influence of alcohol, controlled**  
23 **substances or drugs; penalties.**

24 (a) 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 the death of any person  
11 within one year next following the act or failure; and

12 (3) Commits the act or failure in reckless disregard of the  
13 safety of others and when the influence of alcohol, controlled  
14 substances or drugs is shown to be a contributing cause to the  
15 death, is guilty of a felony and, upon conviction thereof, shall be  
16 imprisoned in a state correctional facility for not less than two  
17 years nor more than ten years and shall be fined not less than  
18 \$1,000 nor more than \$3,000.

19 (b) Any person who:

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

21 (A) Is under the influence of alcohol;  
22 (B) Is under the influence of any controlled substance;  
23 (C) Is under the influence of any other drug;  
24 (D) Is under the combined influence of alcohol and any

1 controlled substance or any other drug; or

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

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

11 (c) Any person who:

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

13 (A) Is under the influence of alcohol;

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

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

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

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

20 (2) While driving does any act forbidden by law or fails to  
21 perform any duty imposed by law in the driving of the vehicle,  
22 which act or failure proximately causes bodily injury to any person  
23 other than himself or herself, is guilty of a misdemeanor and, upon  
24 conviction thereof, shall be confined in jail for not less than one

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

4 (d) 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, but less than fifteen  
13 hundredths of one percent, by weight;

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

20 (e) Any person who drives a vehicle in this state while he or  
21 she has an alcohol concentration in his or her blood of fifteen  
22 hundredths of one percent or more, by weight, is guilty of a  
23 misdemeanor and, upon conviction thereof, shall be confined in jail  
24 for not less than two days nor more than six months, which jail

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

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

15 (g) Any person who:

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

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; or

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

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

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

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

1 the program, the court shall dismiss the charge against the person  
2 and expunge the person's record as it relates to the alleged  
3 offense. In the event the person fails to successfully complete  
4 the program, the court shall proceed to an adjudication of the  
5 alleged offense. A motion for a continuance under this subsection  
6 may not be construed as an admission or be used as evidence. A  
7 person arrested and charged with an offense under the provisions of  
8 this subsection or subsection (a), (b), (c), (d), (e), (f), (g) ~~or~~  
9 ~~(h)~~ , (h) or (r) of this section may not also be charged with an  
10 offense under this subsection arising out of the same transaction  
11 or occurrence.

12 (j) 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) The person while driving has on or within the motor  
22 vehicle one or more other persons who are unemancipated minors who  
23 have not reached their sixteenth birthday 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 twelve months, which jail  
2 term is to include actual confinement of not less than forty-eight  
3 hours and shall be fined not less than \$200 nor more than \$1,000.

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

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

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

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



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

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

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

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

9 (p) For purposes of this section, the term "controlled  
10 substance" has the meaning ascribed to it in chapter sixty-a of  
11 this 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*~~, *Provided*,  
18 *however*, That the court may impose a term of conditional probation  
19 pursuant to section two-b of this article to persons adjudicated  
20 thereunder. An order for home detention by the court pursuant to  
21 the provisions of article eleven-b of said chapter may be used as  
22 an alternative sentence to any period of incarceration required by  
23 this section for a first or subsequent offense: ~~*Provided, however*~~,  
24 *Provided further*, That for any period of home incarceration ordered

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

13 (r) 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) While driving does any act forbidden by law or fails to  
23 perform any duty imposed by law in the driving of the vehicle,  
24 which act or failure proximately causes serious bodily injury to

1 any person other than himself or herself; and

2 (3) Commits the act or failure in reckless disregard of the  
3 safety of others and when the influence of alcohol, controlled  
4 substances or drugs is shown to be a contributing cause to the  
5 serious bodily injury, is guilty of a felony and, upon conviction  
6 thereof, shall be imprisoned in a state correctional facility for  
7 not less than one nor more than three years and the court may, in  
8 its discretion, impose a fine of not less than \$3,000 nor more than  
9 \$5,000.

10 (4) For purposes of this subsection, "serious bodily injury"  
11 means bodily injury which creates a substantial risk of death,  
12 which causes serious or prolonged disfigurement, prolonged  
13 impairment of health or prolonged loss or impairment of the  
14 function of any bodily organ.

15 (s) A person violating any provision of subsection (r) of this  
16 section for the second or any subsequent offense under this section  
17 is guilty of a felony and, upon conviction thereof, shall be  
18 imprisoned in a state correctional facility for not less than three  
19 nor more than five years and the court may, in its discretion,  
20 impose a fine of not less than \$3,000 nor more than \$5,000.

NOTE: The purpose of this bill is to make it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and recklessly causing serious bodily injury to another person. The bill also establishes penalties for first and subsequent violations of specific provisions of the

article.

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