

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Originating**

### **House Bill 4738**

(BY DELEGATES HANSHAW, MCCUSKEY, FOSTER, WELD,  
FAST, OVERINGTON, FOLK, SHAFFER, MOORE, BYRD  
AND MANCHIN)

[Originating in the Committee on the Judiciary;  
reported on February 25, 2016.]



1 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating  
 2 to the offense of driving in an impaired state; establishing the offense of driving a vehicle  
 3 while he or she is in an impaired state; establishing the offense of driving a vehicle while  
 4 he or she is in an impaired state but has an alcohol concentration in his or her blood of  
 5 less than fifteen hundredths of one percent by weight; adding influence of substances in  
 6 definition of impaired state; and providing for penalties.

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

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

**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 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 fifteen years and shall be fined not less than \$1,000 nor more than \$3,000:  
19 *Provided*, 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 ten 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 nor more than one year and shall be fined not less than \$200 nor more than  
29 \$1,000: *Provided*, That such jail term shall include actual confinement of not less than twenty-four  
30 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive  
31 credit for any period of actual confinement he or she served upon arrest for the subject offense.

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

39 (f) Any person who drives a vehicle in this state while he or she has an alcohol  
40 concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty

41 of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days  
42 nor more than six months, which jail term is to include actual confinement of not less than  
43 twenty-four hours, and shall be fined not less than \$200 nor more than \$1,000. A person  
44 sentenced pursuant to this subdivision shall receive credit for any period of actual confinement  
45 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 in this state is guilty of a misdemeanor and, upon conviction  
48 thereof, shall be confined in jail for not less than one day nor more than six months, which jail  
49 term is to include actual confinement of not less than twenty-four hours, and shall be fined not  
50 less than \$100 nor more than \$500. A person sentenced pursuant to this subdivision shall receive  
51 credit for any period of actual confinement he or she served upon arrest for the subject offense.

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

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

60 (j) Any person under the age of twenty-one years who drives a vehicle in this state while  
61 he or she has an alcohol concentration in his or her blood of two hundredths of one percent or  
62 more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under  
63 this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less  
64 than \$25 nor more than \$100. For a second or subsequent offense under this subsection, the  
65 person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for  
66 twenty-four hours and shall be fined not less than \$100 nor more than \$500. A person who is

67 charged with a first offense under the provisions of this subsection may move for a continuance  
68 of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle  
69 Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. Upon  
70 successful completion of the program, the court shall dismiss the charge against the person and  
71 expunge the person's record as it relates to the alleged offense. In the event the person fails to  
72 successfully complete the program, the court shall proceed to an adjudication of the alleged  
73 offense. A motion for a continuance under this subsection may not be construed as an admission  
74 or be used as evidence.

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

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

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

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

93 years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than  
94 \$5,000.

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

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

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

104 (3) Any period of conditional probation imposed pursuant section two-b of this article for  
105 violation of subsection (e) of this section, which violation occurred within the ten-year period  
106 immediately preceding the date of arrest in the current proceeding.

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

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

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

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

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

NOTE: The purpose of this bill is to clarify the offense of driving while under an impaired state. The bill additionally adds influence of other substances in definition of impaired state.

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