WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

ENROLLED

SENATE BILL NO. 14

(By Senator WOOTON, et al.)

PASSED February 6, 1995
In Effect from Passage
ENROLLED
Senate Bill No. 16

(By Senators Wooton, Anderson, Bowman, Buckalew, Deem, Dittmar, Miller, Oliverio, Ross, Scott, Wagner, White, Wiedebusch and Yoder)

[Passed February 6, 1995; in effect from passage.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to driving under the influence of alcohol, controlled substances or drugs; establishing certain crimes; prescribing penalties therefor; and making technical revisions to clarify the applicability of vehicle alcohol test and lock program.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and 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) Any person who:

2 (1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol; or
(B) He is under the influence of any controlled substance; or
(C) He is under the influence of any other drug; or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or
(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and
(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure; and
(3) Commits such act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to such death, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:
(1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol; or
(B) He is under the influence of any controlled substance; or
(C) He is under the influence of any other drug; or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or
(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and
(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving
of such vehicle, which act or failure proximately causes
the death of any person within one year next following
such act or failure, is guilty of a misdemeanor, and, upon
conviction thereof, shall be confined in jail for not less
than ninety days nor more than one year and shall be
fined not less than five hundred dollars nor more than
one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while:

(A) He is under the influence of alcohol; or

(B) He is under the influence of any controlled
substance; or

(C) He is under the influence of any other drug; or

(D) He is under the combined influence of alcohol and
any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood
of ten hundredths of one percent or more, by weight; and

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

(d) Any person who:

(1) Drives a vehicle in this state while:

(A) He is under the influence of alcohol; or

(B) He is under the influence of any controlled
substance; or

(C) He is under the influence of any other drug; or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

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

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

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

(A) Under the influence of alcohol; or

(B) Under the influence of any controlled substance; or

(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any controlled substance or any other drug; or

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

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

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

(h) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings from time to time to allow the person to participate in the vehicle alcohol test and lock program as provided for in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection shall not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f) or (g) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.
(i) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) of this section shall, for the second offense under this section, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(k) For purposes of subsections (i) and (j) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of the prior enactment of this section for an offense which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after the tenth day of June, one thousand nine hundred eighty-three.
(l) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In such case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

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

(n) For purposes of this section, the term “controlled substance” shall have the meaning ascribed to it in chapter sixty-a of this code.

(o) The sentences provided herein upon conviction for a violation of this article are mandatory and shall not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 15th day of January, 1935.

[Signature]
Governor