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KEN HECHLER
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

ENROLLED

SENATE BILL NO. 16

(By Senator Wooten, 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:

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

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

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

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

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

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

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

24 (b) Any person who:

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

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

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

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

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

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

34 (2) When so driving does any act forbidden by law or
35 fails to perform any duty imposed by law in the driving

36 of such vehicle, which act or failure proximately causes
37 the death of any person within one year next following
38 such act or failure, is guilty of a misdemeanor, and, upon
39 conviction thereof, shall be confined in jail for not less
40 than ninety days nor more than one year and shall be
41 fined not less than five hundred dollars nor more than
42 one thousand dollars.

43 (c) Any person who:

44 (1) Drives a vehicle in this state while:

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

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

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

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

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

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

63 (d) Any person who:

64 (1) Drives a vehicle in this state while:

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

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

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

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

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

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

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

87 (f) Any person who:

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

90 (A) Under the influence of alcohol; or

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

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

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

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

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

101 (g) Any person who:

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

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

136 A person arrested and charged with an offense under
137 the provisions of subsection (a), (b), (c), (d), (e), (f) or (g)
138 of this section may not also be charged with an offense
139 under this subsection arising out of the same transaction
140 or occurrence.

141 (i) A person violating any provision of subsection (b),
142 (c), (d), (e), (f) or (g) of this section shall, for the second
143 offense under this section, be guilty of a misdemeanor,
144 and, upon conviction thereof, shall be confined in jail for
145 a period of not less than six months nor more than one
146 year, and the court may, in its discretion, impose a fine
147 of not less than one thousand dollars nor more than three
148 thousand dollars.

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

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

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

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

171 (3) Any conviction under a municipal ordinance of this
172 state or any other state or a statute of the United States
173 or of any other state of an offense which has the same
174 elements as an offense described in subsection (a), (b),
175 (c), (d), (e), (f) or (g) of this section, which offense
176 occurred after the tenth day of June, one thousand nine
177 hundred eighty-three.

178 (l) A person may be charged in a warrant or indictment
179 or information for a second or subsequent offense under
180 this section if the person has been previously arrested for
181 or charged with a violation of this section which is
182 alleged to have occurred within the applicable time
183 periods for prior offenses, notwithstanding the fact that
184 there has not been a final adjudication of the charges for
185 the alleged previous offense. In such case, the warrant
186 or indictment or information must set forth the date,
187 location and particulars of the previous offense or
188 offenses. No person may be convicted of a second or
189 subsequent offense under this section unless the
190 conviction for the previous offense has become final.

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

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

201 (o) The sentences provided herein upon conviction for
202 a violation of this article are mandatory and shall not be
203 subject to suspension or probation: *Provided*, That the
204 court may apply the provisions of article eleven-a,
205 chapter sixty-two of this code to a person sentenced or
206 committed to a term of one year or less. An order for
207 home detention by the court pursuant to the provisions
208 of article eleven-b, chapter sixty-two of this code may be
209 used as an alternative sentence to any period of
210 incarceration required by this section.

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

Randy Schoonover
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Carroll R. Rhoads
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Ed Allen
.....
Speaker House of Delegates

The within *is approved* this the *15th*
day of *February*, 1985.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 2/10/95

Time 9:51 am