

HB 4592

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 4592

(By Delegates Proudfoot, Williams, Stemple, Riggs,  
Willis, Keiley and Anderson)



Passed March 14, 1998

In Effect Ninety Days from Passage



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**ENROLLED**  
**H. B. 4592**

(BY DELEGATES PROUDFOOT, WILLIAMS, STEMPEL, RIGGS, WILLIS,  
KELLEY AND ANDERSON)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eighteen-a and eighteen-b, all relating to establishing the misdemeanor criminal offense of negligent homicide when a motorboat or vessel is operated in reckless disregard of the safety of others and results in the death of any person and establishing the penalty therefor of imprisonment of not more than one year or fine of not less than one hundred dollars nor more than one thousand dollars, or both imprisonment and fine, and suspending motorboat or vessel operation privileges for a five-year period for one so convicted; establishing the felony criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, when a motorboat or vessel is operated in reckless disregard of the safety of others and results in the death of any person, and establishing the penalty therefor of imprisonment of not less than one year nor more than ten years and fine of not less than one thousand dollars nor more than three thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, when a motorboat or vessel is operated in violation of any act forbidden by law and results in the death of any person, and establishing the

penalty therefor of imprisonment of not less than ninety days nor more than one year and fine of not less than five hundred dollars nor more than one thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, when a motorboat or vessel is operated in violation of any act forbidden by law and results in the injury of any person other than himself or herself, and establishing the penalty therefor of imprisonment of not less than one day nor more than one year, to include actual confinement of not less than twenty-four hours and fine of not less than two hundred dollars nor more than one thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, and establishing the penalty therefor of imprisonment of not less than one day nor more than six months, to include actual confinement of not less than twenty-four hours and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel by any person who is a habitual user of narcotic drugs or amphetamine, or derivative thereof, and establishing the penalty therefor of imprisonment of not less than one day nor more than six months, to include actual confinement of not less than twenty-four hours and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of knowingly allowing the operation of one's motorboat or vessel by any person who is under the influence of alcohol, controlled substances, other drugs, or a combination thereof, and establishing the penalty therefor of imprisonment of not more than six months, and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of knowingly allowing the ~~the~~ drugs or amphetamine, or derivative thereof, and establishing the penalty therefor of imprisonment of not more than six months and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel while under the age of twenty-one years while he or she has an alcohol blood

operation of one's motorboat or vessel  
by any person who is a habitual user  
of narcotic

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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, and for a first offense, establishing the penalty therefor of a fine of not less than twenty-five dollars nor more than one hundred dollars, for a second offense, establishing the penalty therefor of imprisonment of twenty-four hours and a fine of not less than one hundred dollars nor more than five hundred dollars; <sup>PROHIBITING</sup> ~~permitting~~ an arrest and charge under different subsections for the same transaction or occurrence; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof with one or more persons on board who are less than sixteen years of age and establishing the penalty therefor of imprisonment of not less than two days nor more than twelve months, to include actual confinement of not less than forty-eight hours, and fine of not less than two hundred dollars nor more than one thousand dollars; establishing that a second offense shall constitute a misdemeanor with a penalty of confinement not less than six months nor more than one year, and a discretionary fine of not less than one thousand dollars nor more than three thousand dollars; establishing that a third offense shall constitute a felony with a penalty of confinement in the penitentiary not less than <sup>ONE YEAR MORE THAN</sup> ~~three~~ years, and a discretionary fine of not less than three thousand dollars nor more than five thousand dollars; establishing that subsequent offenses which constitute second or third convictions include subsections of this article, any municipal ordinance of this state or statute of the United States or any other state which has the same elements as an offense described in this article; permitting a person to be charged in warrant or indictment or information for a subsequent offense before final adjudication of the subsequent offense; negating a defense of prescribed use of alcohol or controlled substances; defining controlled substances; and, establishing that all sentences herein are mandatory while allowing the court certain discretion.

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

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto two new sections, designated sections eighteen-a and eighteen-b, all to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

**§20-7-18a. Negligent homicide; penalties.**

1 (a) When the death of any person ensues within one  
2 year as a proximate result of injury received by operating  
3 any motorboat or vessel anywhere in this state in reckless  
4 disregard of the safety of others, the person so operating  
5 such motorboat or vessel shall be guilty of negligent  
6 homicide.

7 (b) Any person convicted of negligent homicide shall  
8 be punished by imprisonment for not more than one year  
9 or by fine of not less than one hundred dollars nor more  
10 than one thousand dollars, or by both such fine and  
11 imprisonment.

12 (c) The director shall suspend the privilege to operate  
13 a motorboat or vessel in this state for a period of five years  
14 from the date of conviction.

**§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.**

1 (a) Any person who:

2 (1) Operates a motorboat or vessel in this state while:

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

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

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

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

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

14       (2) When so operating does any act forbidden by law  
15 or fails to perform any duty imposed by law in the  
16 operating of such motorboat or vessel, which act or failure  
17 proximately causes the death of any person within one  
18 year next following such act or failure; and

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

27       (b) Any person who:

28       (1) Operates a motorboat or vessel in this state while:

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

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

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

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

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

40       (2) When so operating does any act forbidden by law  
41 or fails to perform any duty imposed by law in the  
42 operating of such motorboat or vessel, which act or failure  
43 proximately causes the death of any person within one  
44 year next following such act or failure, is guilty of a  
45 misdemeanor and, upon conviction thereof, shall be  
46 confined in jail for not less than ninety days nor more  
47 than one year and shall be fined not less than five hundred  
48 dollars nor more than one thousand dollars.

49       (c) Any person who:

50 (1) Operates a motorboat or vessel in this state while:

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

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

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

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

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

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

72 (d) Any person who:

73 (1) Operates a motorboat or vessel in this state while:

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

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

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

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

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

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

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

100 (f) Any person who:

101 (1) Knowingly permits his or her motorboat or vessel  
102 to be operated in this state by any other person who is:

103 (A) Under the influence of alcohol; or

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

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

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

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

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

115 (g) Any person who:

116 Knowingly permits his or her motorboat or vessel to  
117 be operated in this state by any other person who is an  
118 habitual user of narcotic drugs or amphetamine or any  
119 derivative thereof, is guilty of a misdemeanor and, upon  
120 conviction thereof, shall be confined in jail for not more



121 than six months and shall be fined not less than one  
122 hundred dollars nor more than five hundred dollars.

123 (h) Any person under the age of twenty-one years  
124 who operates a motorboat or vessel in this state while he or  
125 she has an alcohol concentration in his or her blood of  
126 two hundredths of one percent or more, by weight, but less  
127 than ten hundredths of one percent, by weight, shall, for a  
128 first offense under this subsection, be guilty of a  
129 misdemeanor and, upon conviction thereof, shall be fined  
130 not less than twenty-five dollars nor more than one  
131 hundred dollars. For a second or subsequent offense  
132 under this subsection, such person is guilty of a  
133 misdemeanor and, upon conviction thereof, shall be  
134 confined in jail for twenty-four hours, and shall be fined  
135 not less than one hundred dollars nor more than five  
136 hundred dollars.

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

142 (i) Any person who:

143 (1) Operates a motorboat or vessel in this state while:

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

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

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

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

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

155 (2) The person when so operating has on or within the  
156 motorboat or vessel one or more other persons who are

157 unemancipated minors who have not reached their  
158 sixteenth birthday, shall be guilty of a misdemeanor and,  
159 upon conviction thereof, shall be confined in jail for not  
160 less than two days nor more than twelve months, which jail  
161 term shall include actual confinement of not less than  
162 forty-eight hours, and shall be fined not less than two  
163 hundred dollars nor more than one thousand dollars.

164 (j) A person violating any provision of subsection (b),  
165 (c), (d), (e), (f), (g) or (i) of this section shall, for the  
166 second offense under this section, be guilty of a  
167 misdemeanor and, upon conviction thereof, shall be  
168 confined in jail for a period of not less than six months  
169 nor more than one year, and the court may, in its  
170 discretion, impose a fine of not less than one thousand  
171 dollars nor more than three thousand dollars.

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

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

184 (1) Any conviction under the provisions of subsection  
185 (a), (b), (c), (d), (e) or (f) of this section for an offense  
186 which occurred on or after the effective date of this  
187 section;

188 (2) Any conviction under the provisions of subsection  
189 (a) or (b) of this section for an offense which occurred  
190 within a period of five years immediately preceding the  
191 date of the offense; and

192 (3) Any conviction under a municipal ordinance of  
193 this state or any other state or a statute of the United States  
194 or of any other state of an offense which has the same  
195 elements as an offense described in subsection (a), (b), (c),

196 (d), (e), (f) or (g) of this section, which offense occurred  
197 after the effective date of this section.

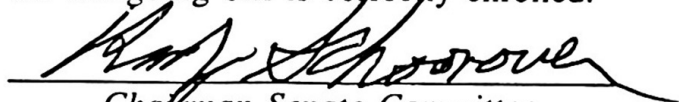
198 (m) A person may be charged in a warrant or  
199 indictment or information for a second or subsequent  
200 offense under this section if the person has been  
201 previously arrested for or charged with a violation of this  
202 section which is alleged to have occurred within the  
203 applicable time periods for prior offenses, notwithstanding  
204 the fact that there has not been a final adjudication of the  
205 charges for the alleged previous offense. In such case, the  
206 warrant or indictment or information must set forth the  
207 date, location and particulars of the previous offense or  
208 offenses. No person may be convicted of a second or  
209 subsequent offense under this section unless the  
210 conviction for the previous offense has become final.

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

218 (o) For purposes of this section, the term "controlled  
219 substance" shall have the meaning ascribed to it in chapter  
220 sixty-a of this code.

221 (p) The sentences provided herein upon conviction for  
222 a violation of this article are mandatory and shall not be  
223 subject to suspension or probation: *Provided*, That the  
224 court may apply the provisions of article eleven-a, chapter  
225 sixty-two of this code to a person sentenced or committed  
226 to a term of one year or less. An order for home  
227 detention by the court pursuant to the provisions of article  
228 eleven-b, chapter sixty-two of this code may be used as an  
229 alternative sentence to any period of incarceration  
230 required by this section.

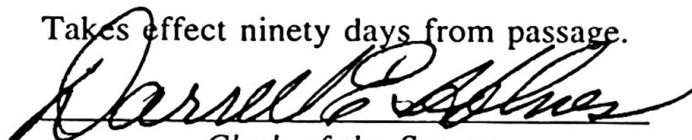
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

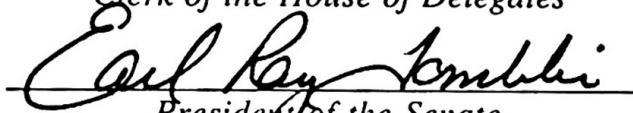
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

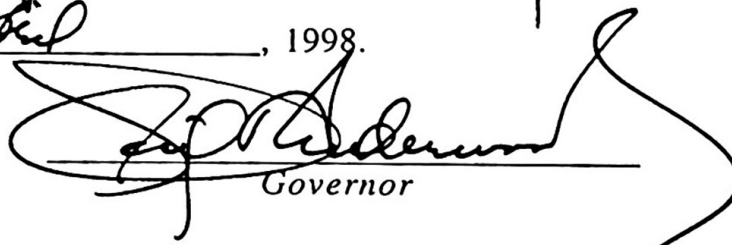
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 24  
day of April, 1998.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:51 pm