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
ENROLLED

H. B. 4592

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

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

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 use of narcotic 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
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; 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 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.

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

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

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

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

(a) Any person who:

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

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

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

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

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

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and
(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of such motorboat or vessel, 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) Operates a motorboat or vessel in this state while:

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

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

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

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

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

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of such motorboat or vessel, 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) Operates a motorboat or vessel in this state while:

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

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

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

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

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

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of such motorboat or vessel, which act or failure proximately causes bodily injury to any person other than himself or herself, 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) Operates a motorboat or vessel in this state while:

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

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

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

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

(E) He or she 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, operates a motorboat or vessel 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 motorboat or vessel to be operated 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 motorboat or vessel to be operated 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
(h) Any person under the age of twenty-one years who operates a motorboat or vessel 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 arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

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

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

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

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

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

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

(2) The person when so operating has on or within the motorboat or vessel one or more other persons who are
unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) 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.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) 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.

(l) For purposes of subsections (j) and (k) 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 this section for an offense which occurred on or after the effective date of this section;

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

(m) 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.

(n) 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 operate 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.

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

(p) 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.
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 was approved this the 24th day of April, 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/98
Time 2:50 p.m.