

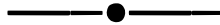
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

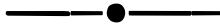


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**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2544

(By Delegates Fragale, Miley and Iaquina)



Passed March 10, 2007

In Effect Ninety Days from Passage

FILED

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COMMITTEE SUBSTITUTE OFFICE WEST VIRGINIA
SECRETARY OF STATE
FOR

H. B. 2544

(BY DELEGATES FRAGALE, MILEY AND IAQUINTA)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-5-2 of the code of West Virginia, 1931, as amended, relating to increasing the penalty for conviction of the offense of driving under the influence causing death.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the code of West Virginia, 1931, 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 he or she:
- 3 (A) Is under the influence of alcohol; or
- 4 (B) Is under the influence of any controlled substance; or
- 5 (C) Is under the influence of any other drug; or
- 6 (D) Is under the combined influence of alcohol and any
- 7 controlled substance or any other drug; or

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

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

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

22 (b) Any person who:

23 (1) Drives a vehicle in this State while he or she:

24 (A) Is under the influence of alcohol; or

25 (B) Is under the influence of any controlled substance; or

26 (C) Is under the influence of any other drug; or

27 (D) Is under the combined influence of alcohol and any
28 controlled substance or any other drug; or

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

31 (2) When so driving does any act forbidden by law or fails
32 to perform any duty imposed by law in the driving of the
33 vehicle, which act or failure proximately causes the death of
34 any person within one year next following the act or failure,
35 is guilty of a misdemeanor and, upon conviction thereof, shall
36 be confined in jail for not less than ninety days nor more than
37 one year and shall be fined not less than five hundred dollars
38 nor more than one thousand dollars.

39 (c) Any person who:

40 (1) Drives a vehicle in this State while he or she:

41 (A) Is under the influence of alcohol; or

42 (B) Is under the influence of any controlled substance; or

43 (C) Is under the influence of any other drug; or

44 (D) Is under the combined influence of alcohol and any
45 controlled substance or any other drug; or

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

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

57 (d) Any person who:

58 (1) Drives a vehicle in this State while he or she:

59 (A) Is under the influence of alcohol; or

60 (B) Is under the influence of any controlled substance; or

61 (C) Is under the influence of any other drug; or

62 (D) Is under the combined influence of alcohol and any
63 controlled substance or any other drug; or

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

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

72 (e) Any person who, being an habitual user of narcotic
73 drugs or amphetamine or any derivative thereof, drives a
74 vehicle in this State, is guilty of a misdemeanor and, upon
75 conviction thereof, shall be confined in jail for not less than
76 one day nor more than six months, which jail term is to

77 include actual confinement of not less than twenty-four hours,
78 and shall be fined not less than one hundred dollars nor more
79 than five hundred dollars.

80 (f) Any person who:

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

83 (A) Is under the influence of alcohol; or

84 (B) Is under the influence of any controlled substance; or

85 (C) Is under the influence of any other drug; or

86 (D) Is under the combined influence of alcohol and any
87 controlled substance or any other drug; or

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

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

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

101 (h) Any person under the age of twenty-one years who
102 drives a vehicle in this State while he or she has an alcohol
103 concentration in his or her blood of two hundredths of one
104 percent or more, by weight, but less than eight hundredths of
105 one percent, by weight, for a first offense under this
106 subsection, is guilty of a misdemeanor and, upon conviction
107 thereof, shall be fined not less than twenty-five dollars nor
108 more than one hundred dollars. For a second or subsequent
109 offense under this subsection, the person is guilty of a
110 misdemeanor and, upon conviction thereof, shall be confined
111 in jail for twenty-four hours, and shall be fined not less than
112 one hundred dollars nor more than five hundred dollars. A
113 person who is charged with a first offense under the provisions
114 of this subsection may move for a continuance of the

115 proceedings, from time to time, to allow the person to
116 participate in the vehicle alcohol test and lock program as
117 provided in section three-a, article five-a of this chapter.
118 Upon successful completion of the program, the court shall
119 dismiss the charge against the person and expunge the person's
120 record as it relates to the alleged offense. In the event the
121 person fails to successfully complete the program, the court
122 shall proceed to an adjudication of the alleged offense. A
123 motion for a continuance under this subsection may not be
124 construed as an admission or be used as evidence.

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

129 (i) Any person who:

130 (1) Drives a vehicle in this State while he or she:

131 (A) Is under the influence of alcohol; or

132 (B) Is under the influence of any controlled substance; or

133 (C) Is under the influence of any other drug; or

134 (D) Is under the combined influence of alcohol and any
135 controlled substance or any other drug; or

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

138 (2) The person when so driving has on or within the motor
139 vehicle one or more other persons who are unemancipated
140 minors who have not reached their sixteenth birthday, is guilty
141 of a misdemeanor and, upon conviction thereof, shall be
142 confined in jail for not less than two days nor more than
143 twelve months, which jail term is to include actual
144 confinement of not less than forty-eight hours, and shall be
145 fined not less than two hundred dollars nor more than one
146 thousand dollars.

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

154 (k) A person violating any provision of subsection (b), (c),
155 (d), (e), (f), (g) or (i) of this section, for the third or any
156 subsequent offense under this section, is guilty of a felony
157 and, upon conviction thereof, shall be imprisoned in a state
158 correctional facility for not less than one nor more than three
159 years, and the court may, in its discretion, impose a fine of not
160 less than three thousand dollars nor more than five thousand
161 dollars.

162 (l) For purposes of subsections (j) and (k) of this section
163 relating to second, third and subsequent offenses, the
164 following types of convictions are to be regarded as
165 convictions under this section:

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

171 (2) Any conviction under a municipal ordinance of this
172 State or any other state or a statute of the United States or of
173 any other state of an offense which has the same elements as
174 an offense described in subsection (a), (b), (c), (d), (e), (f) or
175 (g) of this section, which offense occurred within the ten-year
176 period immediately preceding the date of arrest in the current
177 proceeding.

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

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

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

200 (p) The sentences provided herein upon conviction for a
201 violation of this article are mandatory and may not be subject
202 to suspension or probation: *Provided*, That the court may
203 apply the provisions of article eleven-a, chapter sixty-two of
204 this code to a person sentenced or committed to a term of one
205 year or less for a first offense under this section. An order for
206 home detention by the court pursuant to the provisions of
207 article eleven-b of said chapter may be used as an alternative
208 sentence to any period of incarceration required by this section
209 for a first or subsequent offense: *Provided, however*, That for
210 any period of home incarceration ordered for a person
211 convicted of second offense under this section, electronic
212 monitoring shall be required for no fewer than five days of the
213 total period of home confinement ordered and the offender
214 may not leave home for those five days notwithstanding the
215 provisions of section five, article eleven-b, chapter sixty-two
216 of this code: *Provided further*, That for any period of home
217 incarceration ordered for a person convicted of a third or
218 subsequent violation of this section, electronic monitoring
219 shall be included for no fewer than ten days of the total period
220 of home confinement ordered and the offender may not leave
221 home for those ten days notwithstanding section five, article
222 eleven-b, chapter sixty-two of this code.

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

[Handwritten Signature]

Chairman Senate Committee

[Handwritten Signature]

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Handwritten Signature]

Clerk of the Senate

[Handwritten Signature]

Clerk of the House of Delegates

[Handwritten Signature]

President of the Senate

[Handwritten Signature]

Speaker of the House of Delegates

The within is approved this the 23rd day of *April* 2007.

[Handwritten Signature]

Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2007

Time 2:01 pm