ENROLLED

House Bill 4738

(By Delegates Hanshaw, McCuskey, Foster, Weld, Fast, Overington, Folk, Shaffer, Moore, Byrd and Manchin)

[Passed March 12, 2016; in effect ninety days from passage.]
WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

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(By Delegates Hanshaw, McCuskey, Foster, Weld, Fast, Overington, Folk, Shaffer, Moore, Byrd and Manchin)

[Passed March 12, 2016; 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 the offense of driving in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight; adding influence of inhalant substances in definition of impaired state; and providing for penalties.

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.

(a) Definitions. —

1. "Impaired State" means a person:

(A) Is under the influence of alcohol;

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

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

(D) Is 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 eight hundredths of one percent or more, by weight.

2. "Bodily Injury" means injury that causes substantial physical pain, illness or any impairment of physical condition.

3. "Serious Bodily Injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.
(b) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes the death of any person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years and shall be fined not less than $1,000 nor more than $3,000: Provided, That any death charged under this subsection must occur within one year of the offense.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes serious bodily injury to any person other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and shall be fined not less than $1,000 nor more than $3,000.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state and such impaired state proximately causes a 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 more than one year and shall be fined not less than $200 nor more than $1,000: Provided, That such jail term shall include actual confinement of not less than twenty-four hours: Provided, however, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle in this state: (i) while he or she is in an impaired state or (ii) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than $100 nor more than $500: Provided, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty
of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days
nor more than six months, which jail term is to include actual confinement of not less than
twenty-four hours, and shall be fined not less than $200 nor more than $1,000. A person
sentenced pursuant to this subdivision shall receive credit for any period of actual confinement
he or she served upon arrest for the subject offense.

(g) Any person who, being a 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 is to include actual confinement of not less than twenty-four hours, and shall be fined not
less than $100 nor more than $500. A person sentenced pursuant to this subdivision shall receive
credit for any period of actual confinement he or she served upon arrest for the subject offense.

(h) Any person who knowingly permits his or her vehicle to be driven in this state by any
other person who is in an impaired state 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 $100 nor
more than $500.

(i) Any person who knowingly permits his or her vehicle to be driven in this state by any
other person who is a 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 $100 nor more than $500.

(j) 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 eight hundredths of one percent, by weight, for a first offense under
this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
than $25 nor more than $100. For a second or subsequent offense under this subsection, the
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 $100 nor more than $500. 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 Motor Vehicle Alcohol Test and Lock Program as provided 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 may not be construed as an admission or be used as evidence.

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

(k) Any person who drives a vehicle in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, and shall be fined not less than $200 nor more than $1,000: Provided, That such jail term shall include actual confinement of not less than forty-eight hours: Provided, however, That a person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(l) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year and the court may, in its discretion, impose a fine of not less than $1,000 nor more than $3,000.

(m) A person violating any provision of subsection (d), (e), (f), (g), (h) or (j) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five
years and the court may, in its discretion, impose a fine of not less than $3,000 nor more than $5,000.

(n) For purposes of subsections (l) and (m) of this section relating to second, third and subsequent offenses, the following events shall be regarded as offenses under this section:

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

(2) 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 (b), (c), (d), (e), (f), (g), (h) or (i) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding; and,

(3) Any period of conditional probation imposed pursuant section two-b of this article for violation of subsection (e) of this section, which violation occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(o) 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 period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that 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, or the person has previously had a period of conditional probation imposed pursuant to section two-b of this article.

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

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

(r) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not 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 for a first offense under this section: Provided, however, That the court may impose a term of conditional probation pursuant to section two-b of this article to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: Provided, further, That for any period of home incarceration ordered for a person convicted of second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of this code: And provided further, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within bill approved this the 25th day of March, 2016.

Governor
PRESENTED TO THE GOVERNOR

MAR 24 2016

Time 3:44 pm