Committee Substitute

for

House Bill 2183

BY DELEGATES SHOTT, STEELE, HArSHBARGER AND WILSON

[Passed March 5, 2019; in effect ninety days from passage.]
WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

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AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to driving a vehicle under the influence of alcohol, controlled substances, drugs, or a combination thereof; and clarifying that certain misdemeanor offenses of driving under the influence do not encompass or include operating a vehicle solely and exclusively on one's own property.

Be it enacted by the Legislature of West Virginia:

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 15 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 10 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 24 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 24 hours, and shall be fined not less than $200 nor more than $1,000. A person sentenced pursuant
(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 24 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 21 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 24 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 §17C-5A-3a of this code. Upon successful completion of the program, the court shall
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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 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall
be confined in jail for not less than two days nor more than 12 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 48 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 10-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 10-year period immediately preceding the date of arrest in the current proceeding; and,

(3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for violation of subsection (e) of this section, which violation occurred within the 10-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 §17C-5-2b 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 (i) 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 §60A-1-101 et seq. 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 §62-11A-1 et seq. 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 §17C-5-2b of this code to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 et seq. of this code 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 a 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 §62-11B-5 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 10 days of the total period of home confinement ordered and the offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

(s) As used in subsections (e), (f), (g), (h), (i), and (j) of this section, the words “drives a vehicle in this state” do not mean or include driving or operating a vehicle solely and exclusively on one’s own property.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Marle Capito
Chairman, House Committee

Marty Moorhead
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Stephanie H. Harriss
Clerk of the House of Delegates

Clerk of the Senate

Evan Jenkins
Speaker of the House of Delegates

President of the Senate

The within is approved this the 26th day of March, 2019.

Governor