

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 608**

4 (By Senators Browning, Kessler (Mr. President) and Klempa)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 27, 2012.]

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12 A BILL to amend and reenact §17C-5-4 of the Code of West Virginia,
13 1931, as amended, relating to driving under the influence of
14 a controlled substance or substances or a combination of a
15 controlled substance or alcohol; authorizing search warrant
16 for blood draw; criteria for seeking a search warrant; and
17 penalties.

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

19 That §17C-5-4 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

21 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

22 **§17C-5-4. Implied consent to test; administration at direction of**
23 **law-enforcement officer; designation of type of test;**
24 **definition of "law-enforcement officer".**

1 (a) Any person who drives a motor vehicle in this state is
2 considered to have given his or her consent by the operation of the
3 motor vehicle to a preliminary breath analysis and a secondary
4 chemical test of either his or her blood, breath or urine for the
5 purposes of determining the alcoholic content of his or her blood.

6 (b) A preliminary breath analysis may be administered in
7 accordance with the provisions of section five of this article
8 whenever a law-enforcement officer has reasonable cause to believe
9 a person has committed an offense prohibited by section two of this
10 article or by an ordinance of a municipality of this state which
11 has the same elements as an offense described in section two of
12 this article.

13 (c) A secondary test of blood, breath or urine is incidental
14 to a lawful arrest and is to be administered at the direction of
15 the arresting law-enforcement officer having reasonable grounds to
16 believe the person has committed an offense prohibited by section
17 two of this article or by an ordinance of a municipality of this
18 state which has the same elements as an offense described in
19 section two of this article.

20 (d) The law-enforcement agency that employs the law-
21 enforcement officer shall designate which type of secondary test is
22 to be administered: *Provided*, That if the test designated is a
23 blood test and the person arrested refuses to submit to the blood
24 test, then the law-enforcement officer making the arrest shall

1 designate either a breath or urine test to be administered.
2 Notwithstanding the provisions of section seven of this article,
3 the refusal to submit to a blood test only may not result in the
4 revocation of the arrested person's license to operate a motor
5 vehicle in this state.

6 (e) Any person to whom a preliminary breath test is
7 administered who is then arrested shall be given a written
8 statement advising him or her that his or her refusal to submit to
9 the secondary chemical test pursuant to subsection (d) of this
10 section, will result in the revocation of his or her license to
11 operate a motor vehicle in this state for a period of at least one
12 year and up to life.

13 (f) Any law-enforcement officer who has been properly trained
14 in the administration of any secondary chemical test authorized by
15 this article, including, but not limited to, certification by the
16 Bureau for Public Health in the operation of any equipment required
17 for the collection and analysis of a breath sample, may conduct the
18 test at any location in the county wherein the arrest is made:
19 *Provided*, That the law-enforcement officer may conduct the test at
20 the nearest available properly functioning secondary chemical
21 testing device located outside the county in which the arrest was
22 made, if: (i) There is no properly functioning secondary chemical
23 testing device located within the county the arrest was made; or
24 (ii) there is no magistrate available within the county the arrest

1 was made for the arraignment of the person arrested. A law-
2 enforcement officer who is directing that a secondary chemical test
3 be conducted has the authority to transport the person arrested to
4 where the secondary chemical testing device is located.

5 (g) If the arresting officer lacks proper training in the
6 administration of a secondary chemical test, then any other law-
7 enforcement officer who has received training in the administration
8 of the secondary chemical test to be administered may, upon the
9 request of the arresting law-enforcement officer and in his or her
10 presence, conduct the secondary test. The results of a test
11 conducted pursuant to this subsection may be used in evidence to
12 the same extent and in the same manner as if the test had been
13 conducted by the arresting law-enforcement officer.

14 (h) Only the person actually administering or conducting a
15 test conducted pursuant to this article is competent to testify as
16 to the results and the veracity of the test.

17 (i) For the purpose of this article, the term "law-enforcement
18 officer" or "police officer" means: (1) Any member of the West
19 Virginia State Police; (2) any sheriff and any deputy sheriff of
20 any county; (3) any member of a police department in any
21 municipality as defined in section two, article one, chapter eight
22 of this code; (4) any natural resources police officer of the
23 Division of Natural Resources; and (5) any special police officer
24 appointed by the Governor pursuant to the provisions of section

1 forty-one, article three, chapter sixty-one of this code who has
2 completed the course of instruction at a law-enforcement training
3 academy as provided for under the provisions of section nine,
4 article twenty-nine, chapter thirty of this code.

5 (j) A law-enforcement officer who has reasonable cause to
6 believe that person has committed an offense prohibited by section
7 eighteen, article seven, chapter twenty of this code, relating to
8 the operation of a motorboat, jet ski or other motorized vessel,
9 shall follow the provisions of this section in administering, or
10 causing to be administered, a preliminary breath analysis and the
11 secondary chemical test of the accused person's blood, breath or
12 urine for the purpose of determining alcohol content of his or her
13 blood.

14 (k) Whenever a law-enforcement officer has probable cause to
15 believe that a person lawfully detained has committed a violation
16 of section two of this article by operating a motor vehicle while
17 under the influence of a controlled substance or substances or a
18 combination of a controlled substance or substances and alcohol,
19 the officer may apply for a search warrant to draw blood from the
20 motor vehicle operator if:

21 (1) The motor vehicle operator is exhibiting behaviors
22 consistent with being impaired to the point it prevents safe
23 operation of a motor vehicle;

24 (2) The person operating the motor vehicle has been requested

1 to consent to a blood test and has declined; and

2 (3) The taking of the sample is done within two hours of the
3 person's arrest or the acts alleged, whichever is later in time.

4 When a person undergoes a blood test pursuant to this
5 subsection, only a physician, registered nurse, laboratory
6 technician, emergency medical technician - paramedic or other
7 qualified person to extract blood samples may withdraw blood for
8 the purpose of determining the drug or alcoholic content therein.

9 No physician, registered nurse or other qualified person or
10 employer thereof shall incur any civil or criminal liability as a
11 result of the medically proper obtaining of such blood specimens
12 pursuant to a search warrant.