

Senate Bill No. 608

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

[Introduced February 16, 2012; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §17C-5-4 of the Code of West Virginia,
1931, as amended, relating to driving under the influence;
authorizing search warrant for blood draw; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

(a) Any person who drives a motor vehicle in this state is
considered to have given his or her consent by the operation of the
motor vehicle to a preliminary breath analysis and a secondary

1 chemical test of either his or her blood, breath or urine for the
2 purposes of determining the alcoholic content of his or her blood.

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

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

17 (d) The law-enforcement agency that employs the law-
18 enforcement officer shall designate which type of secondary test is
19 to be administered: *Provided*, That if the test designated is a
20 blood test and the person arrested refuses to submit to the blood
21 test, then the law-enforcement officer making the arrest shall
22 designate either a breath or urine test to be administered.
23 Notwithstanding the provisions of section seven of this article,

1 the refusal to submit to a blood test only may not result in the
2 revocation of the arrested person's license to operate a motor
3 vehicle in this state.

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

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

1 enforcement officer who is directing that a secondary chemical test
2 be conducted has the authority to transport the person arrested to
3 where the secondary chemical testing device is located.

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

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

16 (i) For the purpose of this article, the term "law-enforcement
17 officer" or "police officer" means: (1) Any member of the West
18 Virginia State Police; (2) any sheriff and any deputy sheriff of
19 any county; (3) any member of a police department in any
20 municipality as defined in section two, article one, chapter eight
21 of this code; (4) any natural resources police officer of the
22 Division of Natural Resources; and (5) any special police officer
23 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) A law-enforcement officer who has reasonable cause to
15 believe that a person has committed an offense prohibited by
16 section two, article five of this chapter by being under the
17 influence of a controlled substance or combination of controlled
18 substances or any combination of controlled substances and alcohol
19 may request the person to voluntarily submit a blood sample to be
20 tested for controlled substances or controlled substances and
21 alcohol.

22 (l) A law-enforcement officer who has reasonable cause to
23 believe that a person has committed an offense prohibited by

1 section two, article five of this chapter by being under the
2 influence of a controlled substance or combination of controlled
3 substances or any combination of controlled substances and alcohol
4 may apply for a search warrant to draw blood from such person.

5 (m) When a person undergoes a blood test pursuant to this
6 section, only a physician, registered nurse, laboratory technician,
7 emergency medical technician, or other qualified person may
8 withdraw blood for the purpose of determining the drug or alcoholic
9 content therein. No physician, registered nurse, or other
10 qualified person or employer thereof shall incur any civil or
11 criminal liability as a result of the medically proper obtaining of
12 such blood specimens when requested in writing by a law-enforcement
13 officer.

NOTE: The purpose of this bill is to authorize the use of a search warrant to draw blood when a person is believed to be driving under the influence of drugs.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.