

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2513**

5 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
6 [By Request of the Executive]

7 [Passed April 13, 2013; in effect ninety days from passage.]

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9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto two new sections designated §17C-1-67 and
12 §17C-1-68; to amend and reenact §17C-5-4, §17C-5-6, §17C-5-7,
13 §17C-5-8, and §17C-5-9 of said code; and to amend said code by
14 adding thereto a new section, designated §17C-5-12, all
15 relating to the enforcement of laws prohibiting the operation
16 of a motor vehicle, motorboat, jet ski or other motorized
17 vessel while under the influence of alcohol controlled
18 substance, or drugs generally; defining "drug" and "controlled
19 substance"; correcting reference to period of license
20 suspension for failure to submit to certain tests to provide
21 consistency with other provisions of law; authorizing
22 law-enforcement agencies to designate more than one secondary
23 chemical test to be administered; maintaining the exception
24 to a license revocation for the refusal to submit to a blood
25 test; requiring training of law-enforcement officers;
26 including controlled substances and drugs in blood test

1 administration procedures; providing the drugs or classes of
2 drug to be included in a chemical analysis; requiring the
3 Bureau for Public Health to prescribe minimum levels of
4 substance or drugs in order to be admissible; authorizing
5 emergency rules; requiring the Bureau for Public Health to
6 review current methods and standards; requiring a blood
7 specimen to test for controlled substances or drugs to be
8 taken within four hours of arrest; prohibiting testing results
9 to be used as evidence in a criminal prosecution for the
10 possession of a controlled substance; providing that refusal
11 to provide a blood sample may be admissible in a criminal
12 prosecution for operation of a motor vehicle while under the
13 influence of alcohol controlled substance or drugs;
14 eliminating urine test as a possible secondary chemical test;
15 and requiring the Bureau for Public Health to report to the
16 Legislature.

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto two new sections designated §17C-1-67 and
20 §17C-1-68; that §17C-5-4, §17C-5-6, §17C-5-7, §17C-5-8 and §17C-5-9
21 of said code be amended and reenacted; and that said code be
22 amended by adding thereto a new section, designated §17C-5-12, all
23 to read as follows:

24 **ARTICLE 1. WORDS AND PHRASES DEFINED.**

25 **§17C-1-67. Drug.**

1 "Drug" has the same meaning as set forth in section one
2 hundred one, article one, chapter sixty-a of this code, the Uniform
3 Controlled Substances Act, that when taken into the human body can
4 impair the ability of a person to operate a vehicle safely and in
5 compliance with traffic regulations and the laws of the road.

6 **§17C-1-68. Controlled substance.**

7 "Controlled substance" means any substance classified under
8 the provisions of chapter sixty-a of this code, the Uniform
9 Controlled Substances Act, and includes all substances listed on
10 Schedules I through V, inclusive, of article two of said chapter,
11 as revised.

12 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

13 **§17C-5-4. Implied consent to test; administration at direction of**
14 **law-enforcement officer; designation of type of**
15 **test; definition of law-enforcement officer.**

16 (a) Any person who drives a motor vehicle in this state is
17 considered to have given his or her consent by the operation of the
18 motor vehicle to a preliminary breath analysis and a secondary
19 chemical test of either his or her blood or breath to determine the
20 alcohol concentration in his or her blood, or the concentration in
21 the person's body of a controlled substance, drug, or any
22 combination thereof.

23 (b) A preliminary breath analysis may be administered in
24 accordance with the provisions of section five of this article
25 whenever a law-enforcement officer has reasonable cause to believe

1 a person has committed an offense prohibited by section two of this
2 article or by an ordinance of a municipality of this state which
3 has the same elements as an offense described in section two of
4 this article.

5 (c) A secondary test of blood or breath is incidental to a
6 lawful arrest and is to be administered at the direction of the
7 arresting law-enforcement officer having probable cause to believe
8 the person has committed an offense prohibited by section two of
9 this article or by an ordinance of a municipality of this state
10 which has the same elements as an offense described in section two
11 of this article.

12 (d) The law-enforcement agency that employs the arresting
13 law-enforcement officer shall designate the secondary tests to be
14 administered: Notwithstanding the provisions of section seven of
15 this article, the refusal to submit to a blood test only may not
16 result in the revocation of the arrested person's license to
17 operate a motor vehicle in this state.

18 (e) Any person to whom a preliminary breath test is
19 administered who is arrested shall be given a written statement
20 advising him or her that his or her refusal to submit to the
21 secondary chemical test pursuant to subsection (d) of this section
22 will result in the revocation of his or her license to operate a
23 motor vehicle in this state for a period of at least forty-five
24 days and up to life.

25 (f) Any law-enforcement officer who has been properly trained
26 in the administration of any secondary chemical test authorized by

1 this article, including, but not limited to, certification by the
2 Bureau for Public Health in the operation of any equipment required
3 for the collection and analysis of a breath sample, may conduct the
4 test at any location in the county wherein the arrest is made:
5 *Provided*, That the law-enforcement officer may conduct the test at
6 the nearest available properly functioning secondary chemical
7 testing device located outside the county in which the arrest was
8 made, if: (I) There is no properly functioning secondary chemical
9 testing device located within the county the arrest was made; or
10 (ii) there is no magistrate available within the county the arrest
11 was made for the arraignment of the person arrested. A
12 law-enforcement officer who is directing that a secondary chemical
13 test be conducted has the authority to transport the person
14 arrested to where the secondary chemical testing device is located.

15 (g) If the arresting officer lacks proper training in the
16 administration of a secondary chemical test, then any other
17 law-enforcement officer who has received training in the
18 administration of the secondary chemical test to be administered
19 may, upon the request of the arresting law-enforcement officer and
20 in his or her presence, conduct the secondary test. The results of
21 a test conducted pursuant to this subsection may be used in
22 evidence to the same extent and in the same manner as if the test
23 had been conducted by the arresting law-enforcement officer.

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

1 (I) (1) For the purpose of this article, the term
2 "law-enforcement officer" or "police officer" means: (1) Any
3 member of the West Virginia State Police; (2) any sheriff and any
4 deputy sheriff of any county; (3) any member of a police department
5 in any municipality as defined in section two, article one, chapter
6 eight of this code; (4) any natural resources police officer of the
7 Division of Natural Resources; and (5) any special police officer
8 appointed by the Governor pursuant to the provisions of section
9 forty-one, article three, chapter sixty-one of this code who has
10 completed the course of instruction at a law-enforcement training
11 academy as provided for under the provisions of section nine,
12 article twenty-nine, chapter thirty of this code.

13 (2) In addition to standards promulgated by the Governor's
14 Committee on Crime, Delinquency and Correction, pursuant to section
15 three, article twenty-nine, chapter thirty of this code, governing
16 the qualification of law-enforcement officers and the entry-level
17 law-enforcement training curricula, the Governor's Committee on
18 Crime, Delinquency and Correction shall require the satisfactory
19 completion of a minimum of not less than six hours of training in
20 the recognition of impairment in drivers who are under the
21 influence of controlled substances or drugs other than alcohol.

22 (3) In addition to standards promulgated by the Governor's
23 Committee on Crime, Delinquency and Correction, pursuant to section
24 three, article twenty-nine, chapter thirty of this code,
25 establishing standards governing in-service law-enforcement officer
26 training curricula and in-service supervisory level training

1 curricula, the Governor's Committee on Crime, Delinquency and
2 Correction shall require the satisfactory completion of a minimum
3 of not less than six hours of training in the recognition of
4 impairment in drivers who are under the influence of controlled
5 substances or drugs other than alcohol.

6 (4) That after December 31, 2014, a law-enforcement officer
7 who has not satisfactorily completed the minimum number of hours of
8 training in the recognition of impairment in drivers who are under
9 the influence of controlled substances or drugs other than alcohol,
10 required by subdivisions (2) or (3), may no longer require any
11 person to submit to secondary chemical test of his or her blood for
12 the purposes of determining the concentration in the person's body
13 of a controlled substance, drug, or any combination thereof.

14 (j) A law-enforcement officer who has reasonable cause to
15 believe that person has committed an offense prohibited by section
16 eighteen, article seven, chapter twenty of this code, relating to
17 the operation of a motorboat, jet ski or other motorized vessel,
18 shall follow the provisions of this section in administering, or
19 causing to be administered, a preliminary breath analysis and
20 incidental to a lawful arrest, a secondary chemical test of the
21 accused person's blood or breath to determine the alcohol
22 concentration in his or her blood, or the concentration in the
23 person's body of a controlled substance, drug, or any combination
24 thereof.

25 **§17C-5-6. How blood test administered; additional test at option**
26 **of person tested; use of test results; certain**

1 **immunity from liability incident to administering**
2 **test.**

3 Only a doctor of medicine or osteopathy, or registered nurse,
4 or trained medical technician at the place of his or her employment,
5 acting at the request and direction of the law-enforcement officer,
6 may withdraw blood to determine the alcohol concentration in the
7 blood, or the concentration in the blood of a controlled substance,
8 drug, or any combination thereof. These limitations shall not apply
9 to the taking of a breath test. In withdrawing blood to determine
10 the alcohol concentration in the blood, or the presence in the blood
11 of a controlled substance, drug, or any combination thereof, only
12 a previously unused and sterile needle and sterile vessel may be
13 utilized and the withdrawal shall otherwise be in strict accord with
14 accepted medical practices. A nonalcoholic antiseptic shall be used
15 for cleansing the skin prior to venapuncture. The person tested
16 may, at his or her own expense, have a doctor of medicine or
17 osteopathy, or registered nurse, or trained medical technician at
18 the place of his or her employment, of his or her own choosing,
19 administer a chemical test in addition to the test administered at
20 the direction of the law-enforcement officer. Upon the request of
21 the person who is tested, full information concerning the test taken
22 at the direction of the law-enforcement officer shall be made
23 available to him or her. No person who administers any such test
24 upon the request of a law-enforcement officer as herein defined, no
25 hospital in or with which such person is employed or is otherwise
26 associated or in which such test is administered, and no other

1 person, firm or corporation by whom or with which such person is
2 employed or is in any way associated, shall be in any way criminally
3 liable for the administration of such test, or civilly liable in
4 damages to the person tested unless for gross negligence or willful
5 or wanton injury.

6 **§17C-5-7. Refusal to submit to tests; revocation of license or**
7 **privilege; consent not withdrawn if person arrested**
8 **is incapable of refusal; hearing.**

9 (a) If any person under arrest as specified in section four of
10 this article refuses to submit to any secondary chemical test, the
11 tests shall not be given: *Provided*, That prior to the refusal, the
12 person is given an oral warning and a written statement advising him
13 or her that his or her refusal to submit to the secondary test
14 finally designated will result in the revocation of his or her
15 license to operate a motor vehicle in this state for a period of at
16 least forty-five days and up to life; and that after fifteen minutes
17 following the warnings the refusal is considered final. The
18 arresting officer after that period of time expires has no further
19 duty to provide the person with an opportunity to take the secondary
20 test. The officer shall, within forty-eight hours of the refusal,
21 sign and submit to the Commissioner of Motor Vehicles a written
22 statement of the officer that: (1) He or she had probable cause to
23 believe the person had been driving a motor vehicle in this state
24 while under the influence of alcohol, controlled substances or
25 drugs; (2) the person was lawfully placed under arrest for an

1 offense relating to driving a motor vehicle in this state while
2 under the influence of alcohol, controlled substances or drugs; (3)
3 the person refused to submit to the secondary chemical test finally
4 designated in the manner provided in section four of this article;
5 and (4) the person was given a written statement advising him or her
6 that his or her license to operate a motor vehicle in this state
7 would be revoked for a period of at least forty-five days and up to
8 life if he or she refused to submit to the secondary test finally
9 designated in the manner provided in section four of this article.
10 The signing of the statement required to be signed by this section
11 constitutes an oath or affirmation by the person signing the
12 statement that the statements contained in the statement are true
13 and that any copy filed is a true copy. The statement shall contain
14 upon its face a warning to the officer signing that to willfully
15 sign a statement containing false information concerning any matter
16 or thing, material or not material, is false swearing and is a
17 misdemeanor. Upon receiving the statement the commissioner shall
18 make and enter an order revoking the person's license to operate a
19 motor vehicle in this state for the period prescribed by this
20 section.

21 For the first refusal to submit to the designated secondary
22 chemical test, the commissioner shall make and enter an order
23 revoking the person's license to operate a motor vehicle in this
24 state for a period of one year or forty-five days, with an
25 additional one year of participation in the Motor Vehicle Alcohol
26 Test and Lock Program in accordance with the provisions of section

1 three-a, article five-a of this chapter: *Provided*, That a person
2 revoked for driving while under the influence of drugs is not
3 eligible to participate in the Motor Vehicle Test and Lock Program.
4 The application for participation in the Motor Vehicle Alcohol Test
5 and Lock Program shall be considered to be a waiver of the hearing
6 provided in section two of said article. If the person's license
7 has previously been revoked under the provisions of this section,
8 the commissioner shall, for the refusal to submit to the designated
9 secondary chemical test, make and enter an order revoking the
10 person's license to operate a motor vehicle in this state for a
11 period of ten years: *Provided, however*, That the license may be
12 reissued in five years in accordance with the provisions of section
13 three, article five-a of this chapter. If the person's license has
14 previously been revoked more than once under the provisions of this
15 section, the commissioner shall, for the refusal to submit to the
16 designated secondary chemical test, make and enter an order revoking
17 the person's license to operate a motor vehicle in this state for
18 a period of life. A copy of each order shall be forwarded to the
19 person by registered or certified mail, return receipt requested,
20 and shall contain the reasons for the revocation and shall specify
21 the revocation period imposed pursuant to this section. A
22 revocation shall not become effective until ten days after receipt
23 of the copy of the order. Any person who is unconscious or who is
24 otherwise in a condition rendering him or her incapable of refusal
25 shall be considered not to have withdrawn his or her consent for a
26 test of his or her blood or breath as provided in section four of

1 this article and the test may be administered although the person
2 is not informed that his or her failure to submit to the test will
3 result in the revocation of his or her license to operate a motor
4 vehicle in this state for the period provided for in this section.
5 A revocation under this section shall run concurrently with the
6 period of any suspension or revocation imposed in accordance with
7 other provisions of this code and growing out of the same incident
8 which gave rise to the arrest for driving a motor vehicle while
9 under the influence of alcohol, controlled substances or drugs and
10 the subsequent refusal to undergo the test finally designated in
11 accordance with the provisions of section four of this article.

12 (b) For the purposes of this section, where reference is made
13 to previous suspensions or revocations under this section, the
14 following types of suspensions or revocations shall also be regarded
15 as suspensions or revocations under this section:

16 (1) Any suspension or revocation on the basis of a conviction
17 under a municipal ordinance of another state or a statute of the
18 United States or of any other state of an offense which has the same
19 elements as an offense described in section two of this article for
20 conduct which occurred on or after June 10, 1983; and

21 (2) Any revocation under the provisions of section one or two,
22 article five-a of this chapter for conduct which occurred on or
23 after June 10, 1983.

24 (c) A person whose license to operate a motor vehicle in this
25 state has been revoked shall be afforded an opportunity to be heard,
26 in accordance with the provisions of section two, article five-a of

1 this chapter.

2 (d) The refusal to submit to a blood test may be admissible at
3 the court's discretion in a trial for the offense of driving a motor
4 vehicle in this state while under the influence of alcohol a
5 controlled substance or drug or the combination of alcohol and
6 drugs.

7 **§17C-5-8. Interpretation and use of chemical test.**

8 (a) Upon trial for the offense of driving a motor vehicle in
9 this state while under the influence of alcohol, controlled
10 substances or drugs, or upon the trial of any civil or criminal
11 action arising out of acts alleged to have been committed by any
12 person driving a motor vehicle while under the influence of alcohol,
13 controlled substances or drugs, evidence of the amount of alcohol
14 in the person's blood at the time of the arrest or of the acts
15 alleged, as shown by a chemical analysis of his or her blood or
16 breath, is admissible, if the sample or specimen was taken within
17 the time period provided in subsection (g).

18 (b) The evidence of the concentration of alcohol in the
19 person's blood at the time of the arrest or the acts alleged gives
20 rise to the following presumptions or has the following effect:

21 (1) Evidence that there was, at that time, five hundredths of
22 one percent or less, by weight, of alcohol in his or her blood, is
23 prima facie evidence that the person was not under the influence of
24 alcohol;

25 (2) Evidence that there was, at that time, more than five
26 hundredths of one percent and less than eight hundredths of one

1 percent, by weight, of alcohol in the person's blood is relevant
2 evidence, but it is not to be given prima facie effect in indicating
3 whether the person was under the influence of alcohol;

4 (3) Evidence that there was, at that time, eight hundredths of
5 one percent or more, by weight, of alcohol in his or her blood,
6 shall be admitted as prima facie evidence that the person was under
7 the influence of alcohol.

8 (c) A determination of the percent, by weight, of alcohol in
9 the blood shall be based upon a formula of:

10 (1) The number of grams of alcohol per one hundred cubic
11 centimeters of blood;

12 (2) The number of grams of alcohol per two hundred ten liters
13 of breath; or

14 (3) The number of grams of alcohol per eighty-six milliliters
15 of serum.

16 (d) A chemical analysis of blood for the purpose of determining
17 the controlled substance or drug concentration of a person's blood,
18 must include, but is not limited to, the following drugs or classes
19 of drugs:

20 (1) Marijuana metabolites;

21 (2) Cocaine metabolites;

22 (3) Amphetamines;

23 (4) Opiate metabolites;

24 (5) Phencyclidine (PCP);

25 (6) Benzodiazepines;

26 (7) Propoxyphene;

- 1 (8) Methadone;
- 2 (9) Barbiturates; and
- 3 (10) Synthetic narcotics.

4 (e) (1) A chemical analysis of a person's blood or breath, in
5 order to give rise to the presumptions or to have the effect
6 provided for in this section, must be performed in accordance with
7 methods and standards approved by the state Bureau for Public
8 Health.

9 (A) The Bureau for Public Health shall prescribe, by
10 legislative rules promulgated pursuant to article three, chapter
11 twenty-nine-a of this code, methods and standards for the chemical
12 analysis of a person's blood or breath.

13 (B) Legislative rules proposed by the Bureau for Public Health
14 must specify the test or tests that are approved for reliability of
15 result and ease of administration using scientific methods and
16 instrumentation generally accepted in the forensic community, and
17 must provide an approved method of administration which must be
18 followed in all such tests given under this section.

19 (C) The bureau shall review prescribed standards and methods
20 at least every two years to ensure that the methods and standards
21 are approved for reliability of result and ease of administration
22 using scientific methods and instrumentation generally accepted in
23 the forensic community.

24 (2) A chemical analysis of blood to determine the alcohol
25 content or the controlled substance or drug content of blood shall
26 be conducted by a qualified laboratory or by the State Police

1 scientific laboratory of the West Virginia State Police Forensic
2 Laboratory.

3 (f) The provisions of this article do not limit the
4 introduction in any administrative or judicial proceeding of any
5 other competent evidence bearing on the question of whether the
6 person was under the influence of alcohol, controlled substances or
7 drugs.

8 (g) For the purposes of the admissibility of a chemical test
9 under subsection (a):

10 (1) A sample or specimen taken to determine the alcohol
11 concentration of a person's blood, must be taken within two hours
12 from the time of the person's arrest; or

13 (2) For a sample or specimen to determine the controlled
14 substance or drug content of a person's blood, must be taken within
15 four hours of the person's arrest.

16 (h) The results of any test administered pursuant to this
17 section for the purpose of detecting the concentration of any
18 controlled substance shall not be admissible as evidence in a
19 criminal prosecution for the possession of a controlled substance.

20 **§17C-5-9. Right to demand test.**

21 Any person lawfully arrested for driving a motor vehicle in
22 this state while under the influence of alcohol, controlled
23 substances or drugs shall have the right to demand that a sample or
24 specimen of his or her blood or breath to determine the alcohol
25 concentration of his or her blood be taken within two hours from and
26 after the time of arrest and a sample or specimen of his or her

1 blood or breath to determine the controlled substance or drug
2 content of his or her blood, be taken within four hours from and
3 after the time of arrest, and that a chemical test thereof be made.
4 The analysis disclosed by such chemical test shall be made available
5 to such arrested person forthwith upon demand.

6 **§17C-5-12. Report to the Legislature.**

7 On or before December 31, 2013, the Bureau for Public Health
8 shall submit to the Joint Committee on Government and Finance a
9 report that includes the following:

10 (1) Recommendations for the minimum levels of those drugs or
11 controlled substances contained in subsection (d), section eight of
12 this article, that must be present in a person's blood in order for
13 the test to be admitted as prima facie evidence that the person was
14 under the influence of a controlled substance or drug in a
15 prosecution for the offense of driving a motor vehicle in this
16 state; and

17 (2) Recommendations for the minimum levels of those drugs or
18 controlled substances contained in subsection (d), section eight of
19 this article, that laboratories approved to test blood for drug or
20 controlled substance content can reliably identify and measure for
21 the concentrations of drugs, controlled substances and their
22 metabolites, in blood.