

H. B. 2513

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Introduced; referred to the

Committee on the Judiciary then Finance.]

10 A BILL to amend of the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section designated §17C-1-67; and to  
12 amend and reenact §17C-5-4 and §17C-5-6 of said code, all  
13 relating to improving enforcement of drugged driving offenses;  
14 defining "drug"; providing implied consent to test for  
15 controlled substances or drugs; including controlled  
16 substances and drugs in blood test administration procedures;  
17 and making other clerical changes.

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

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

## ARTICLE 1. WORDS AND PHRASES DEFINED.

24 §17C-1-67. Drug.

1        "Drug" means any substance, other than alcohol, that when  
2 taken into the human body can impair the ability of a person to  
3 operate a vehicle safely and in compliance with traffic regulations  
4 and the laws of the road.

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

6 **§17C-5-4. Implied consent to test; administration at direction of**  
7 **law-enforcement officer; designation of type of**  
8 **test; definition of law-enforcement officer.**

9        (a) Any person who drives a motor vehicle in this state is  
10 considered to have given his or her consent by the operation of the  
11 motor vehicle to a preliminary breath analysis and a secondary  
12 chemical test of either his or her blood, breath, or urine for the  
13 purposes of determining the alcoholic content and the controlled  
14 substance and drug content of his or her blood.

15        (b) A preliminary breath analysis may be administered in  
16 accordance with the provisions of section five of this article  
17 whenever a law-enforcement officer has reasonable cause to believe  
18 a person has committed an offense prohibited by section two of this  
19 article or by an ordinance of a municipality of this state which  
20 has the same elements as an offense described in section two of  
21 this article.

22        (c) A secondary test of blood, breath, or urine is incidental  
23 to a lawful arrest and is to be administered at the direction of  
24 the arresting law-enforcement officer having reasonable grounds to

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

5       (d)     The law-enforcement agency that employs the  
6 law-enforcement officer shall designate which type of secondary  
7 test is to be administered: *Provided*, That if the test designated  
8 is a blood test and the person arrested refuses to submit to the  
9 blood test, then the law-enforcement officer making the arrest  
10 shall designate either a breath or urine test to be administered.  
11 Notwithstanding the provisions of section seven of this article,  
12 the refusal to submit to a blood test only may not result in the  
13 revocation of the arrested person's license to operate a motor  
14 vehicle in this state.

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

22       (f) Any law-enforcement officer who has been properly trained  
23 in the administration of any secondary chemical test authorized by  
24 this article, including, but not limited to, certification by the

1 Bureau for Public Health in the operation of any equipment required  
2 for the collection and analysis of a breath sample, may conduct the  
3 test at any location in the county wherein the arrest is made:  
4 *Provided*, That the law-enforcement officer may conduct the test at  
5 the nearest available properly functioning secondary chemical  
6 testing device located outside the county in which the arrest was  
7 made, if: (i) There is no properly functioning secondary chemical  
8 testing device located within the county the arrest was made; or  
9 (ii) there is no magistrate available within the county the arrest  
10 was made for the arraignment of the person arrested. A  
11 law-enforcement officer who is directing that a secondary chemical  
12 test be conducted has the authority to transport the person  
13 arrested to where the secondary chemical testing device is located.

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

23 (h) Only the person actually administering or conducting a  
24 test conducted pursuant to this article is competent to testify as

1 to the results and the veracity of the test.

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

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 the  
20 secondary chemical test of the accused person's blood, breath, or  
21 urine for the purpose of determining the alcoholic content and the  
22 controlled substance and drug content of his or her blood.

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

1 which such person is employed or is otherwise associated or in which  
2 such test is administered, and no other person, firm or corporation  
3 by whom or with which such person is employed or is in any way  
4 associated, shall be in ~~anywise~~ any way criminally liable for the  
5 administration of such test, or civilly liable in damages to the  
6 person tested unless for gross negligence or willful or wanton  
7 injury.

NOTE: The purpose of this bill is to improve enforcement of laws against drugged driving. The bill defines "drug" and provides that implied consent applies to testing for controlled substances or drugs upon arrest of a driver in this state.

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

§17C-1-67 is new; therefore, it has been completely underscored.