

1 influence of a controlled substance or other drug.

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

3 That §17C-5-4, §17C-5-5, §17C-5-6 and §17C-5-8 of the Code of
4 West Virginia, 1931, as amended, be amended and reenacted, all to
5 read as follows:

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

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

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

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

1 this article.

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

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

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

1 year and up to life.

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

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

1 the same extent and in the same manner as if the test had been
2 conducted by the arresting law-enforcement officer.

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

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

18 (j) A law-enforcement officer who has reasonable cause to
19 believe that person has committed an offense prohibited by section
20 eighteen, article seven, chapter twenty of this code, relating to
21 the operation of a motorboat, jet ski or other motorized vessel,
22 shall follow the provisions of this section in administering, or
23 causing to be administered, a preliminary breath analysis and the
24 secondary chemical test of the accused person's blood, breath or

1 urine for the purpose of determining alcohol content of his or her
2 blood.

3 **§17C-5-5. Preliminary analysis of breath to determine alcoholic**
4 **content of blood.**

5 When a law-enforcement officer has reason to believe a person
6 has committed an offense prohibited by section two of this article
7 or by an ordinance of a municipality of this state which has the
8 same elements as an offense described in said section two of this
9 article, the law-enforcement officer may require ~~such~~ the person to
10 submit to a preliminary breath analysis for the purpose of
11 determining such person's blood alcohol content. ~~Such~~ The breath
12 analysis must be administered as soon as possible after the law-
13 enforcement officer has a reasonable belief that the person has
14 been driving while under the influence of alcohol, controlled
15 substances or drugs. Any preliminary breath analysis required
16 under this section must be administered with a device and in a
17 manner approved by the department of health for that purpose. The
18 results of a preliminary breath analysis shall be used solely for
19 the purpose of guiding the officer in deciding whether an arrest
20 should be made. Following the administration of a preliminary
21 breath test, if any law-enforcement officer still has probable
22 cause to believe that a person has committed an offence prohibited
23 in section two of this article or by an ordinance of a municipality
24 of this state which has the same elements as an offense described

1 in section two of this article, which violation would not be
2 detected by a preliminary breath test, the law-enforcement officer
3 may still place the person under arrest and the results of the
4 preliminary test, alone, may not be a bar to arrest. When a driver
5 is arrested following a preliminary breath analysis, the tests as
6 hereinafter provided in this article shall be administered in
7 accordance with the provisions thereof.

8 **§17C-5-6. How blood test administered; additional test at option**
9 **of person tested; use of test results; certain**
10 **immunity from liability incident to administering**
11 **test.**

12 Only a doctor of medicine or osteopathy, or registered nurse,
13 or trained medical technician at the place of his or her
14 employment, acting at the request and direction of the law-
15 enforcement officer, may withdraw blood for the purpose of
16 determining the alcoholic content thereof and for the purpose of
17 determining the presence and level of controlled substances or
18 other drugs in such blood. These limitations shall not apply to
19 the taking of a breath test or a urine specimen. In withdrawing
20 blood for the purpose of determining the alcoholic content thereof
21 and for the purpose of determining the presence and level of
22 controlled substances or other drugs in the blood, only a
23 previously unused and sterile needle and sterile vessel may be

1 utilized and the withdrawal shall otherwise be in strict accord
2 with accepted medical practices. A nonalcoholic antiseptic shall
3 be used for cleansing the skin prior to venapuncture. The person
4 tested may, at his or her own expense, have a doctor of medicine or
5 osteopathy, or registered nurse, or trained medical technician at
6 the place of his or her employment, of his or her own choosing,
7 administer a chemical test in addition to the test administered at
8 the direction of the law-enforcement officer. Upon the request of
9 the person who is tested, full information concerning the test
10 taken at the direction of the law- enforcement officer shall be
11 made available to him or her. No person who administers any such
12 test upon the request of a law-enforcement officer as herein
13 defined, no hospital in or with which ~~such~~ the person is employed
14 or is otherwise associated or in which ~~such~~ the test is
15 administered, and no other person, firm or corporation by whom or
16 with which ~~such~~ the person is employed or is in any way associated,
17 ~~shall~~ may be in anywise criminally liable for the administration of
18 such test, or civilly liable in damages to the person tested unless
19 for gross negligence or willful or wanton injury.

20 **§17C-5-8. Interpretation and use of chemical test.**

21 (a) Upon trial for the offense of driving a motor vehicle in
22 this state while under the influence of alcohol, controlled
23 substances or drugs, or upon the trial of any civil or criminal
24 action arising out of acts alleged to have been committed by any

1 person driving a motor vehicle while under the influence of
2 alcohol, controlled substances or drugs, evidence of the amount of
3 alcohol ~~and for the purpose of determining~~ or the presence and
4 level of controlled substances or other drugs in the person's blood
5 at the time of the arrest or of the acts alleged, as shown by a
6 chemical analysis of his or her blood, breath or urine, is
7 admissible, if the sample or specimen was taken within two hours
8 from and after the time of arrest or of the acts alleged. The
9 evidence gives rise to the following presumptions or has the
10 following effect:

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

15 (2) Evidence that there was, at that time, more than five
16 hundredths of one percent and less than eight hundredths of one
17 percent, by weight, of alcohol in the person's blood is relevant
18 evidence, but it is not to be given prima facie effect in
19 indicating whether the person was under the influence of alcohol;

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

24 (4) It is prima facie evidence that a person is under the

1 influence of a controlled substance or other drug, if that person
2 has a concentration of any of the following controlled substances
3 or metabolites of a controlled substance in the person's whole
4 blood, blood serum or plasma, or urine that equals or exceeds any
5 of the following, at that time:

6 (A) The person has a concentration of amphetamine in the
7 person's urine of at least five hundred nanograms of amphetamine
8 per milliliter of the person's urine or has a concentration of
9 amphetamine in the person's whole blood or blood serum or plasma of
10 at least one hundred nanograms of amphetamine per milliliter of the
11 person's whole blood or blood serum or plasma.

12 (B) The person has a concentration of cocaine in the person's
13 urine of at least one hundred fifty nanograms of cocaine per
14 milliliter of the person's urine or has a concentration of cocaine
15 in the person's whole blood or blood serum or plasma of at least
16 fifty nanograms of cocaine per milliliter of the person's whole
17 blood or blood serum or plasma.

18 (C) The person has a concentration of cocaine metabolite in
19 the person's urine of at least one hundred fifty nanograms of
20 cocaine metabolite per milliliter of the person's urine or has a
21 concentration of cocaine metabolite in the person's whole blood or
22 blood serum or plasma of at least fifty nanograms of cocaine
23 metabolite per milliliter of the person's whole blood or blood
24 serum or plasma.

1 (D) The person has a concentration of heroin in the person's
2 urine of at least two thousand nanograms of heroin per milliliter
3 of the person's urine or has a concentration of heroin in the
4 person's whole blood or blood serum or plasma of at least fifty
5 nanograms of heroin per milliliter of the person's whole blood or
6 blood serum or plasma.

7 (E) The person has a concentration of heroin metabolite (6-
8 monoacetyl morphine) per milliliter of the person's urine or has a
9 concentration of heroin metabolite (6-monoacetyl morphine) in the
10 person's whole blood or blood serum or plasma of at least ten
11 nanograms of heroin metabolite (6-monoacetyl morphine) per
12 milliliter of the person's whole blood or blood serum or plasma.

13 (F) The person has a concentration of L.S.D. in the person's
14 urine of at least twenty-five nanograms of L.S.D. per milliliter of
15 the person's urine or has a concentration of L.S.D. in the person's
16 whole blood or blood serum or plasma of at least ten nanograms of
17 L.S.D. per milliliter of the person's whole blood or blood serum or
18 plasma.

19 (G) The person has a concentration of marijuana in the
20 person's urine of at least ten nanograms of marijuana per
21 milliliter of the person's urine or has a concentration of
22 marijuana in the person's whole blood or blood serum or plasma of
23 at least two nanograms of marijuana per milliliter of the person's
24 whole blood or blood serum or plasma.

1 (5) Evidence that there was, at that time, a lesser amount of
2 any drug or controlled substance as set forth in subsection (4)
3 above, or any other controlled substance which may impair the
4 driver's ability to safely operate a motor vehicle on the roads of
5 the State of West Virginia is relevant evidence, but it is not to
6 be given prima facie effect in indicating whether the person was
7 under the influence of a controlled substance or other drug.

8 ~~(b) 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;~~

14 ~~(3) The number of grams of alcohol per sixty-seven milliliters~~
15 ~~of urine; or~~

16 ~~(4) The number of grams of alcohol per eighty-six milliliters~~
17 ~~of serum.~~

18 ~~(c)~~ (b) A chemical analysis of a person's blood, breath or
19 urine, in order to give rise to the presumptions or to have the
20 effect provided for in subsection (a) of this section, must be
21 performed in accordance with methods and standards approved by the
22 state division of health. A chemical analysis of blood or urine to
23 determine the alcohol content of blood shall be conducted by a
24 qualified laboratory or by the State Police scientific laboratory

1 of the criminal identification bureau of the West Virginia state
2 police.

3 ~~(d)~~ (c) 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.

NOTE: The purpose of this bill is to establish procedures to obtain evidence to determine the presence of controlled substances or other drugs in a person to determine if a person driving a motor vehicle under the influence of controlled substances or drugs. The bill establishes implied consent by drivers to a secondary test of blood or urine to determine the presence and level of controlled substances or other drugs. The bill provides for arrest by a law-enforcement officer after a negative preliminary breath test to determine a person's blood alcohol content where the officer has probable cause to believe the person is driving under the influences of controlled substances or other drugs. The bill establishes a procedure to obtain blood for the purpose of determining the presence and level of controlled substances or other drugs. It provides for the evidentiary use of results of tests of blood or urine for the presence and level of controlled substances or other drugs. And, the bill establishes prima facie evidence that a person is under the influence of a controlled substance or other drug.

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