

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2513

(BY MR. SPEAKER, (MR. THOMPSON)

AND DELEGATE ARMSTEAD)

[BY REQUEST OF THE EXECUTIVE]

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections designated §17C-1-67 and §17C-1-68; to amend and reenact §17C-5-4, §17C-5-6, §17C-5-7, §17C-5-8, and §17C-5-9 of said code; and to amend said code by adding thereto a new section, designated §17C-5-12, all relating to the enforcement of laws prohibiting the operation of a motor vehicle, motorboat, jet ski or other motorized vessel while under the influence of alcohol controlled substance, or drugs generally; defining “drug” and “controlled substance”; correcting reference to period of license suspension for failure to submit to certain tests

to provide consistency with other provisions of law; authorizing law-enforcement agencies to designate more than one secondary chemical test to be administered; maintaining the exception to a license revocation for the refusal to submit to a blood test; requiring training of law-enforcement officers; including controlled substances and drugs in blood test administration procedures; providing the drugs or classes of drug to be included in a chemical analysis; requiring the Bureau for Public Health to prescribe minimum levels of substance or drugs in order to be admissible; authorizing emergency rules; requiring the Bureau for Public Health to review current methods and standards; requiring a blood specimen to test for controlled substances or drugs to be taken within four hours of arrest; prohibiting testing results to be used as evidence in a criminal prosecution for the possession of a controlled substance; providing that refusal to provide a blood sample may be admissible in a criminal prosecution for operation of a motor vehicle while under the influence of alcohol controlled substance or drugs; eliminating urine test as a possible secondary chemical test; and requiring the Bureau for Public Health to report to the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WORDS AND PHRASES DEFINED.

§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
3 Uniform Controlled Substances Act, that when taken into the
4 human body can impair the ability of a person to operate a

5 vehicle safely and in compliance with traffic regulations and the
6 laws of the road.

§17C-1-68. Controlled substance.

1 “Controlled substance” means any substance classified under
2 the provisions of chapter sixty-a of this code, the Uniform
3 Controlled Substances Act, and includes all substances listed on
4 Schedules I through V, inclusive, of article two of said chapter,
5 as revised.

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.**

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
3 the motor vehicle to a preliminary breath analysis and a
4 secondary chemical test of either his or her blood or breath to
5 determine the alcohol concentration in his or her blood, or the
6 concentration in the person’s body of a controlled substance,
7 drug, or any combination thereof.

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

15 (c) A secondary test of blood or breath is incidental to a
16 lawful arrest and is to be administered at the direction of the
17 arresting law-enforcement officer having probable cause to
18 believe the person has committed an offense prohibited by
19 section two of this article or by an ordinance of a municipality of

20 this state which has the same elements as an offense described
21 in section two of this article.

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

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

35 (f) Any law-enforcement officer who has been properly
36 trained in the administration of any secondary chemical test
37 authorized by this article, including, but not limited to,
38 certification by the Bureau for Public Health in the operation of
39 any equipment required for the collection and analysis of a
40 breath sample, may conduct the test at any location in the county
41 wherein the arrest is made: *Provided*, That the law-enforcement
42 officer may conduct the test at the nearest available properly
43 functioning secondary chemical testing device located outside
44 the county in which the arrest was made, if: (i) There is no
45 properly functioning secondary chemical testing device located
46 within the county the arrest was made; or (ii) there is no
47 magistrate available within the county the arrest was made for
48 the arraignment of the person arrested. A law-enforcement
49 officer who is directing that a secondary chemical test be
50 conducted has the authority to transport the person arrested to
51 where the secondary chemical testing device is located.

52 (g) If the arresting officer lacks proper training in the
53 administration of a secondary chemical test, then any other

54 law-enforcement officer who has received training in the
55 administration of the secondary chemical test to be administered
56 may, upon the request of the arresting law-enforcement officer
57 and in his or her presence, conduct the secondary test. The
58 results of a test conducted pursuant to this subsection may be
59 used in evidence to the same extent and in the same manner as
60 if the test had been conducted by the arresting law-enforcement
61 officer.

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

65 (i) (1) For the purpose of this article, the term
66 “law-enforcement officer” or “police officer” means: (1) Any
67 member of the West Virginia State Police; (2) any sheriff and
68 any deputy sheriff of any county; (3) any member of a police
69 department in any municipality as defined in section two, article
70 one, chapter eight of this code; (4) any natural resources police
71 officer of the Division of Natural Resources; and (5) any special
72 police officer appointed by the Governor pursuant to the
73 provisions of section forty-one, article three, chapter sixty-one
74 of this code who has completed the course of instruction at a
75 law-enforcement training academy as provided for under the
76 provisions of section nine, article twenty-nine, chapter thirty of
77 this code.

78 (2) In addition to standards promulgated by the Governor’s
79 Committee on Crime, Delinquency and Correction, pursuant to
80 section three, article twenty-nine, chapter thirty of this code,
81 governing the qualification of law-enforcement officers and the
82 entry-level law-enforcement training curricula, the Governor’s
83 Committee on Crime, Delinquency and Correction shall require
84 the satisfactory completion of a minimum of not less than six
85 hours of training in the recognition of impairment in drivers who
86 are under the influence of controlled substances or drugs other
87 than alcohol.

88 (3) In addition to standards promulgated by the Governor's
89 Committee on Crime, Delinquency and Correction, pursuant to
90 section three, article twenty-nine, chapter thirty of this code,
91 establishing standards governing in-service law-enforcement
92 officer training curricula and in-service supervisory level
93 training curricula, the Governor's Committee on Crime,
94 Delinquency and Correction shall require the satisfactory
95 completion of a minimum of not less than six hours of training
96 in the recognition of impairment in drivers who are under the
97 influence of controlled substances or drugs other than alcohol.

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

107 (j) A law-enforcement officer who has reasonable cause to
108 believe that person has committed an offense prohibited by
109 section eighteen, article seven, chapter twenty of this code,
110 relating to the operation of a motorboat, jet ski or other
111 motorized vessel, shall follow the provisions of this section in
112 administering, or causing to be administered, a preliminary
113 breath analysis and incidental to a lawful arrest, a secondary
114 chemical test of the accused person's blood or breath to
115 determine the alcohol concentration in his or her blood, or the
116 concentration in the person's body of a controlled substance,
117 drug, or any combination thereof.

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

1 Only a doctor of medicine or osteopathy, or registered nurse,
2 or trained medical technician at the place of his or her

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

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

- 1 (a) If any person under arrest as specified in section four of
2 this article refuses to submit to any secondary chemical test, the
3 tests shall not be given: *Provided*, That prior to the refusal, the

4 person is given an oral warning and a written statement advising
5 him or her that his or her refusal to submit to the secondary test
6 finally designated will result in the revocation of his or her
7 license to operate a motor vehicle in this state for a period of at
8 least forty-five days and up to life; and that after fifteen minutes
9 following the warnings the refusal is considered final. The
10 arresting officer after that period of time expires has no further
11 duty to provide the person with an opportunity to take the
12 secondary test. The officer shall, within forty-eight hours of the
13 refusal, sign and submit to the Commissioner of Motor Vehicles
14 a written statement of the officer that: (1) He or she had probable
15 cause to believe the person had been driving a motor vehicle in
16 this state while under the influence of alcohol, controlled
17 substances or drugs; (2) the person was lawfully placed under
18 arrest for an offense relating to driving a motor vehicle in this
19 state while under the influence of alcohol, controlled substances
20 or drugs; (3) the person refused to submit to the secondary
21 chemical test finally designated in the manner provided in
22 section four of this article; and (4) the person was given a written
23 statement advising him or her that his or her license to operate
24 a motor vehicle in this state would be revoked for a period of at
25 least forty-five days and up to life if he or she refused to submit
26 to the secondary test finally designated in the manner provided
27 in section four of this article. The signing of the statement
28 required to be signed by this section constitutes an oath or
29 affirmation by the person signing the statement that the
30 statements contained in the statement are true and that any copy
31 filed is a true copy. The statement shall contain upon its face a
32 warning to the officer signing that to willfully sign a statement
33 containing false information concerning any matter or thing,
34 material or not material, is false swearing and is a misdemeanor.
35 Upon receiving the statement the commissioner shall make and
36 enter an order revoking the person's license to operate a motor
37 vehicle in this state for the period prescribed by this section.

38 For the first refusal to submit to the designated secondary
39 chemical test, the commissioner shall make and enter an order

40 revoking the person's license to operate a motor vehicle in this
41 state for a period of one year or forty-five days, with an
42 additional one year of participation in the Motor Vehicle Alcohol
43 Test and Lock Program in accordance with the provisions of
44 section three-a, article five-a of this chapter: *Provided*, That a
45 person revoked for driving while under the influence of drugs is
46 not eligible to participate in the Motor Vehicle Test and Lock
47 Program. The application for participation in the Motor Vehicle
48 Alcohol Test and Lock Program shall be considered to be a
49 waiver of the hearing provided in section two of said article. If
50 the person's license has previously been revoked under the
51 provisions of this section, the commissioner shall, for the refusal
52 to submit to the designated secondary chemical test, make and
53 enter an order revoking the person's license to operate a motor
54 vehicle in this state for a period of ten years: *Provided, however*,
55 That the license may be reissued in five years in accordance with
56 the provisions of section three, article five-a of this chapter. If
57 the person's license has previously been revoked more than once
58 under the provisions of this section, the commissioner shall, for
59 the refusal to submit to the designated secondary chemical test,
60 make and enter an order revoking the person's license to operate
61 a motor vehicle in this state for a period of life. A copy of each
62 order shall be forwarded to the person by registered or certified
63 mail, return receipt requested, and shall contain the reasons for
64 the revocation and shall specify the revocation period imposed
65 pursuant to this section. A revocation shall not become effective
66 until ten days after receipt of the copy of the order. Any person
67 who is unconscious or who is otherwise in a condition rendering
68 him or her incapable of refusal shall be considered not to have
69 withdrawn his or her consent for a test of his or her blood or
70 breath as provided in section four of this article and the test may
71 be administered although the person is not informed that his or
72 her failure to submit to the test will result in the revocation of his
73 or her license to operate a motor vehicle in this state for the
74 period provided for in this section. A revocation under this
75 section shall run concurrently with the period of any suspension

76 or revocation imposed in accordance with other provisions of
77 this code and growing out of the same incident which gave rise
78 to the arrest for driving a motor vehicle while under the
79 influence of alcohol, controlled substances or drugs and the
80 subsequent refusal to undergo the test finally designated in
81 accordance with the provisions of section four of this article.

82 (b) For the purposes of this section, where reference is made
83 to previous suspensions or revocations under this section, the
84 following types of suspensions or revocations shall also be
85 regarded as suspensions or revocations under this section:

86 (1) Any suspension or revocation on the basis of a
87 conviction under a municipal ordinance of another state or a
88 statute of the United States or of any other state of an offense
89 which has the same elements as an offense described in section
90 two of this article for conduct which occurred on or after June
91 10, 1983; and

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

95 (c) A person whose license to operate a motor vehicle in this
96 state has been revoked shall be afforded an opportunity to be
97 heard, in accordance with the provisions of section two, article
98 five-a of this chapter.

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

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

1 (a) Upon trial for the offense of driving a motor vehicle in
2 this state while under the influence of alcohol, controlled

3 substances or drugs, or upon the trial of any civil or criminal
4 action arising out of acts alleged to have been committed by any
5 person driving a motor vehicle while under the influence of
6 alcohol, controlled substances or drugs, evidence of the amount
7 of alcohol in the person's blood at the time of the arrest or of the
8 acts alleged, as shown by a chemical analysis of his or her blood
9 or breath, is admissible, if the sample or specimen was taken
10 within the time period provided in subsection (g).

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

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

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

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

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

29 (1) The number of grams of alcohol per one hundred cubic
30 centimeters of blood;

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

33 (3) The number of grams of alcohol per eighty-six milliliters
34 of serum.

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

39 (1) Marijuana metabolites;

40 (2) Cocaine metabolites;

41 (3) Amphetamines;

42 (4) Opiate metabolites;

43 (5) Phencyclidine (PCP);

44 (6) Benzodiazepines;

45 (7) Propoxyphene;

46 (8) Methadone;

47 (9) Barbiturates; and

48 (10) Synthetic narcotics.

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

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

58 (B) Legislative rules proposed by the Bureau for Public
59 Health must specify the test or tests that are approved for
60 reliability of result and ease of administration using scientific
61 methods and instrumentation generally accepted in the forensic
62 community, and must provide an approved method of
63 administration which must be followed in all such tests given
64 under this section.

65 (C) The bureau shall review prescribed standards and
66 methods at least every two years to ensure that the methods and
67 standards are approved for reliability of result and ease of
68 administration using scientific methods and instrumentation
69 generally accepted in the forensic community.

70 (2) A chemical analysis of blood to determine the alcohol
71 content or the controlled substance or drug content of blood shall
72 be conducted by a qualified laboratory or by the State Police
73 scientific laboratory of the West Virginia State Police Forensic
74 Laboratory.

75 (f) The provisions of this article do not limit the introduction
76 in any administrative or judicial proceeding of any other
77 competent evidence bearing on the question of whether the
78 person was under the influence of alcohol, controlled substances
79 or drugs.

80 (g) For the purposes of the admissibility of a chemical test
81 under subsection (a):

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

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

88 (h) The results of any test administered pursuant to this
89 section for the purpose of detecting the concentration of any

90 controlled substance shall not be admissible as evidence in a
91 criminal prosecution for the possession of a controlled substance.

§17C-5-9. Right to demand test.

1 Any person lawfully arrested for driving a motor vehicle in
2 this state while under the influence of alcohol, controlled
3 substances or drugs shall have the right to demand that a sample
4 or specimen of his or her blood or breath to determine the
5 alcohol concentration of his or her blood be taken within two
6 hours from and after the time of arrest and a sample or specimen
7 of his or her blood or breath to determine the controlled
8 substance or drug content of his or her blood, be taken within
9 four hours from and after the time of arrest, and that a chemical
10 test thereof be made. The analysis disclosed by such chemical
11 test shall be made available to such arrested person forthwith
12 upon demand.

§17C-5-12. Report to the Legislature.

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

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

11 (2) Recommendations for the minimum levels of those drugs
12 or controlled substances contained in subsection (d), section
13 eight of this article, that laboratories approved to test blood for
14 drug or controlled substance content can reliably identify and
15 measure for the concentrations of drugs, controlled substances
16 and their metabolites, in blood.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

