

COMMITTEE SUBSTITUTE

FOR

# **H. B. 2513**

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(BY MR. SPEAKER, (MR. THOMPSON)

AND DELEGATE ARMSTEAD)

[BY REQUEST OF THE EXECUTIVE]

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(Originating in the Committee on Finance)

[March 29, 2013]

A BILL 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 while under the influence of a drug or controlled substance

generally; defining “drug” and “controlled substance”; providing implied consent to test for controlled substances or drugs; changing 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 secondary chemical tests to be administered; removing urine as a subject of testing to determine its alcohol content or concentration, or its controlled substance and drug content; removing 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 of Public Health and West Virginia State Police Forensic Laboratory to prescribe minimum levels of substance or drugs in order to be admissible; authorizing emergency rules; requiring the Bureau of Public Health to review current methods and standards; requiring a 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; and requiring the West Virginia State Police Forensic Laboratory 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, ~~or~~  
5 ~~urine for the purposes of determining the alcoholic content of to~~  
6 determine the alcohol concentration in his or her blood, or the  
7 presence in the person's body of a controlled substance, drug, or  
8 any combination thereof.

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

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

23 (d) The law-enforcement agency that employs the arresting  
24 law-enforcement officer shall designate ~~which type of the~~  
25 secondary test is tests to be administered: ~~Provided, That if the~~  
26 test designated is a blood test and the person arrested refuses to  
27 submit to the blood test, then the law-enforcement officer  
28 making the arrest shall designate either a breath or urine test to  
29 be administered. ~~Notwithstanding the provisions of section seven~~  
30 ~~of this article, the refusal to submit to a blood test only may not~~  
31 ~~result in the revocation of the arrested person's license to operate~~  
32 ~~a motor vehicle in this state.~~

33 (e) Any person to whom a preliminary breath test is  
34 administered who is then arrested shall be given a written  
35 statement advising him or her that his or her refusal to submit to

36 the secondary chemical test pursuant to subsection (d) of this  
37 section; will result in the revocation of his or her license to  
38 operate a motor vehicle in this state for a period of at least ~~one~~  
39 year forty-five days and up to life.

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

57 (g) If the arresting officer lacks proper training in the  
58 administration of a secondary chemical test, then any other  
59 law-enforcement officer who has received training in the  
60 administration of the secondary chemical test to be administered  
61 may, upon the request of the arresting law-enforcement officer  
62 and in his or her presence, conduct the secondary test. The  
63 results of a test conducted pursuant to this subsection may be  
64 used in evidence to the same extent and in the same manner as  
65 if the test had been conducted by the arresting law-enforcement  
66 officer.

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

70 (i) (1) For the purpose of this article, the term  
71 “law-enforcement officer” or “police officer” means: (1) Any  
72 member of the West Virginia State Police; (2) any sheriff and  
73 any deputy sheriff of any county; (3) any member of a police  
74 department in any municipality as defined in section two, article  
75 one, chapter eight of this code; (4) any natural resources police  
76 officer of the Division of Natural Resources; and (5) any special

77 police officer appointed by the Governor pursuant to the  
78 provisions of section forty-one, article three, chapter sixty-one  
79 of this code who has completed the course of instruction at a  
80 law-enforcement training academy as provided for under the  
81 provisions of section nine, article twenty-nine, chapter thirty of  
82 this code.

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

93 (3) In addition to standards promulgated by the Governor's  
94 Committee on Crime, Delinquency and Correction, pursuant to  
95 section three, article twenty-nine, chapter thirty of this code,  
96 establishing standards governing in-service law-enforcement

107 officer training curricula and in-service supervisory level  
108 training curricula, the Governor's Committee on Crime,  
109 Delinquency and Correction shall require the satisfactory  
110 completion of a minimum of not less than six hours of training  
111 in the recognition of impairment in drivers who are under the  
112 influence of controlled substances or drugs other than alcohol.

113 (4) That after December 31, 2014, a law-enforcement officer  
114 who has not satisfactorily completed the minimum number of  
115 hours of training in the recognition of impairment in drivers who  
116 are under the influence of controlled substances or drugs other  
117 than alcohol, required by subdivisions (2) or (3), may no longer  
118 require any person to submit to secondary chemical test of his or  
119 her blood for the purposes of determining the presence in the  
120 person's body of a controlled substance, drug, or any  
121 combination thereof.

122 (j) A law-enforcement officer who has reasonable cause to  
123 believe that person has committed an offense prohibited by  
124 section eighteen, article seven, chapter twenty of this code,  
125 relating to the operation of a motorboat, jet ski or other  
126 motorized vessel, shall follow the provisions of this section in

117 administering, or causing to be administered, a preliminary  
118 breath analysis and ~~the~~ incidental to a lawful arrest, a secondary  
119 chemical test of the accused person's blood or ~~breath, or urine~~  
120 ~~for the purposes of determining the alcoholic content of to~~  
121 determine the alcohol concentration in his or her blood, or the  
122 presence in the person's body of a controlled substance, drug, or  
123 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 ~~for the purpose of~~  
5 ~~determining the alcoholic content~~ to determine the alcohol  
6 concentration in the blood, or the presence in the blood of a  
7 controlled substance, drug, or any combination thereof. These  
8 limitations shall not apply to the taking of a breath test ~~or a urine~~  
9 ~~specimen~~. In withdrawing blood ~~for the purpose of determining~~  
10 ~~the alcoholic content~~ to determine the alcohol concentration in  
11 the blood, or the presence in the blood of a controlled substance,

12 drug, or any combination thereof, only a previously unused and  
13 sterile needle and sterile vessel may be utilized and the  
14 withdrawal shall otherwise be in strict accord with accepted  
15 medical practices. A nonalcoholic antiseptic shall be used for  
16 cleansing the skin prior to venapuncture. The person tested may,  
17 at his or her own expense, have a doctor of medicine or  
18 osteopathy, or registered nurse, or trained medical technician at  
19 the place of his or her employment, of his or her own choosing,  
20 administer a chemical test in addition to the test administered at  
21 the direction of the law-enforcement officer. Upon the request of  
22 the person who is tested, full information concerning the test  
23 taken at the direction of the law-enforcement officer shall be  
24 made available to him or her. No person who administers any  
25 such test upon the request of a law-enforcement officer as herein  
26 defined, no hospital in or with which such person is employed or  
27 is otherwise associated or in which such test is administered, and  
28 no other person, firm or corporation by whom or with which  
29 such person is employed or is in any way associated, shall be in  
30 ~~anywise~~ any way criminally liable for the administration of such  
31 test, or civilly liable in damages to the person tested unless for  
32 gross negligence or willful or wanton 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  
15 reasonable grounds to believe the person had been driving a  
16 motor vehicle in this state while under the influence of alcohol,  
17 controlled substances or drugs; (2) the person was lawfully  
18 placed under arrest for an offense relating to driving a motor  
19 vehicle in this state while under the influence of alcohol,

20 controlled substances or drugs; (3) the person refused to submit  
21 to the secondary chemical test finally designated in the manner  
22 provided in section four of this article; and (4) the person was  
23 given a written statement advising him or her that his or her  
24 license to operate a motor vehicle in this state would be revoked  
25 for a period of at least forty-five days and up to life if he or she  
26 refused to submit to the secondary test finally designated in the  
27 manner provided in section four of this article. The signing of  
28 the statement required to be signed by this section constitutes an  
29 oath or 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 ~~or urine~~ as provided in section four of this article and the  
71 test may be administered although the person is not informed  
72 that his or her failure to submit to the test will result in the  
73 revocation of his or her license to operate a motor vehicle in this  
74 state for the period provided for in this section. A revocation  
75 under this section shall run concurrently with the period of any  
76 suspension or revocation imposed in accordance with other  
77 provisions of this code and growing out of the same incident  
78 which gave rise to the arrest for driving a motor vehicle while  
79 under the influence of alcohol, controlled substances or drugs  
80 and the subsequent refusal to undergo the test finally designated  
81 in 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 is not admissible in  
100 a trial for the offense of driving a motor vehicle in this state  
101 while under the influence of a controlled substance or drug.

**§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 or urine, is admissible, if the sample or specimen was  
10 taken within ~~two hours from and after the time of arrest or of the~~  
11 ~~acts alleged~~ the time period provided in subsection (g).

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

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

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

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

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

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

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

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

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

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

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

42 (1) Marijuana metabolites;

43 (2) Cocaine metabolites;

44 (3) Amphetamines;

45 (4) Opiate metabolites;

46 (5) Phencyclidine (PCP);

47 (6) Benzodiazepines;

48 (7) Propoxyphene;

49 (8) Methadone;

50 (9) Barbiturates; and

51 (10) Synthetic narcotics.

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

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

61 (B) Legislative rules proposed by the Bureau of Public  
62 Health must specify the test or tests that are approved for

63 reliability of result and ease of administration using scientific  
64 methods and instrumentation generally accepted in the forensic  
65 community, and must provide an approved method of  
66 administration which must be followed in all such tests given  
67 under this section.

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

73 (2) A chemical analysis of blood ~~or urine~~ to determine the  
74 alcohol content ~~or the controlled substance or drug content~~ of  
75 blood shall be conducted by a qualified laboratory or by the State  
76 Police scientific laboratory of the ~~criminal identification bureau~~  
77 ~~of the~~ West Virginia State Police Forensic Laboratory.

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

83 (g) For the purposes of the admissibility of a chemical test  
84 under subsection (a):

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

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

91 (h) The results of any test administered pursuant to this  
92 section for the purpose of detecting the presence of any  
93 controlled substance shall not be admissible as evidence in a  
94 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 ~~or urine~~ to determine  
5 the 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 West Virginia State  
2 Police Forensic Laboratory shall submit to the Joint Committee  
3 on Government and 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.

