



1 motor vehicle to a preliminary breath analysis ~~and a secondary~~  
2 ~~chemical test~~ of either his or her ~~blood or breath~~ and, upon  
3 issuance of a search warrant, a secondary chemical test of the  
4 driver's blood to determine the alcohol concentration in his or her  
5 blood, or the concentration in the person's body of a controlled  
6 substance, drug, or any combination thereof.

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

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

21 (d) The law-enforcement agency that employs the arresting  
22 law-enforcement officer shall designate the secondary tests to be  
23 administered: Notwithstanding ~~the provisions of~~ section seven of  
24 this article, the refusal to submit to a blood test only may not

1 result in the revocation of the arrested person's license to  
2 operate a motor vehicle in this state.

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

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

1 arrested to where the secondary chemical testing device is located.

2 (g) If the arresting officer lacks proper training in the  
3 administration of a secondary chemical test, then any other  
4 law-enforcement officer who has received training in the  
5 administration of the secondary chemical test to be administered  
6 may, upon the request of the arresting law-enforcement officer and  
7 in his or her presence, conduct the secondary test. The results of  
8 a test conducted pursuant to this subsection may be used in  
9 evidence to the same extent and in the same manner as if the test  
10 had been conducted by the arresting law-enforcement officer.

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

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

1 article twenty-nine, chapter thirty of this code.

2       (2) In addition to standards promulgated by the Governor's  
3 Committee on Crime, Delinquency and Correction, pursuant to section  
4 three, article twenty-nine, chapter thirty of this code, governing  
5 the qualification of law-enforcement officers and the entry-level  
6 law-enforcement training curricula, the Governor's Committee on  
7 Crime, Delinquency and Correction shall require the satisfactory  
8 completion of a minimum of not less than six hours of training in  
9 the recognition of impairment in drivers who are under the  
10 influence of controlled substances or drugs other than alcohol.

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

21       (4) That after December 31, 2014, a law-enforcement officer  
22 who has not satisfactorily completed the minimum number of hours of  
23 training in the recognition of impairment in drivers who are under  
24 the influence of controlled substances or drugs other than alcohol,

1 required by ~~subdivisions~~ subdivision (2) or (3) of this subsection,  
2 may no longer require any person to submit to secondary chemical  
3 test of his or her blood for the purposes of determining the  
4 concentration in the person's body of a controlled substance, drug,  
5 or any combination thereof.

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

NOTE: The purpose of this bill is to require a search warrant  
be issued before a driver of a motor vehicle can be made to submit  
to a secondary blood test to determine the concentration of alcohol  
or controlled substance in his or her blood.

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