

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2513**

4 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
5 [By Request of the Executive]

6 (Originating in the Committee on Finance)

7 [March 29, 2013]

8
9
10 A BILL to amend of the Code of West Virginia, 1931, as amended, by
11 adding thereto two new sections designated §17C-1-67 and
12 §17C-1-68; to amend and reenact §17C-5-4, §17C-5-6, §17C-5-7,
13 §17C-5-8, and §17C-5-9 of said code; and to amend said code by
14 adding there to a new section, designated §17C-5-12, all
15 relating to the enforcement of laws prohibiting the operation
16 of a motor vehicle while under the influence of a drug or
17 controlled substance generally; defining "drug" and
18 "controlled substance"; providing implied consent to test for
19 controlled substances or drugs; changing period of license
20 suspension for failure to submit to certain tests to provide
21 consistency with other provisions of law; authorizing
22 law-enforcement agencies to designate secondary chemical tests
23 to be administered; removing urine as a subject of testing to
24 determine its alcohol content or concentration, or its
25 controlled substance and drug content; removing the exception
26 to a license revocation for the refusal to submit to a blood

1 test; requiring training of law-enforcement officers;
2 including controlled substances and drugs in blood test
3 administration procedures; providing the drugs or classes of
4 drug to be included in a chemical analysis; requiring the
5 Bureau of Public Health and West Virginia State Police
6 Forensic Laboratory to prescribe minimum levels of substance
7 or drugs in order to be admissible; authorizing emergency
8 rules; requiring the Bureau of Public Health to review current
9 methods and standards; requiring a specimen to test for
10 controlled substances or drugs to be taken within four hours
11 of arrest; prohibiting testing results to be used as evidence
12 in a criminal prosecution for the possession of a controlled
13 substance; and requiring the West Virginia State Police
14 Forensic Laboratory to report to the Legislature.

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

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto two new sections designated §17C-1-67 and
18 §17C-1-68; that §17C-5-4, §17C-5-6, §17C-5-7, §17C-5-8 and §17C-5-9
19 of said code be amended and reenacted; and that said code be
20 amended by adding thereto a new section, designated §17C-5-12, all
21 to read as follows:

22 **ARTICLE 1. WORDS AND PHRASES DEFINED.**

23 **§17C-1-67. Drug.**

24 "Drug" has the same meaning as set forth in section one
25 hundred one, article one, chapter sixty-a of this code, the Uniform
26 Controlled Substances Act, that when taken into the human body can

1 impair the ability of a person to operate a vehicle safely and in
2 compliance with traffic regulations and the laws of the road.

3 **§17C-1-68. Controlled substance.**

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

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

10 **§17C-5-4. Implied consent to test; administration at direction of**
11 **law-enforcement officer; designation of type of**
12 **test; definition of law-enforcement officer.**

13 (a) Any person who drives a motor vehicle in this state is
14 considered to have given his or her consent by the operation of the
15 motor vehicle to a preliminary breath analysis and a secondary
16 chemical test of either his or her blood or breath, ~~or urine~~ for
17 ~~the purposes of determining the alcoholic content of~~ to determine
18 the alcohol concentration in his or her blood, or the presence in
19 the person's body of a controlled substance, drug, or any
20 combination thereof.

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

1 has the same elements as an offense described in section two of
2 this article.

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

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

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

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

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

26 (h) Only the person actually administering or conducting a

1 test conducted pursuant to this article is competent to testify as
2 to the results and the veracity of the test.

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

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

24 (3) In addition to standards promulgated by the Governor's
25 Committee on Crime, Delinquency and Correction, pursuant to section
26 three, article twenty-nine, chapter thirty of this code,

1 establishing standards governing in-service law-enforcement officer
2 training curricula and in-service supervisory level training
3 curricula, the Governor's Committee on Crime, Delinquency and
4 Correction shall require the satisfactory completion of a minimum
5 of not less than six hours of training in the recognition of
6 impairment in drivers who are under the influence of controlled
7 substances or drugs other than alcohol.

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

16 (j) A law-enforcement officer who has reasonable cause to
17 believe that person has committed an offense prohibited by section
18 eighteen, article seven, chapter twenty of this code, relating to
19 the operation of a motorboat, jet ski or other motorized vessel,
20 shall follow the provisions of this section in administering, or
21 causing to be administered, a preliminary breath analysis and ~~the~~
22 incidental to a lawful arrest, a secondary chemical test of the
23 accused person's blood or breath, ~~or urine for the purposes of~~
24 determining the alcoholic content of to determine the alcohol
25 concentration in his or her blood, or the presence in the person's
26 body of a controlled substance, drug, or any combination thereof.

1 §17C-5-6. How blood test administered; additional test at option
2 of person tested; use of test results; certain
3 immunity from liability incident to administering
4 test.

5 Only a doctor of medicine or osteopathy, or registered nurse,
6 or trained medical technician at the place of his or her employment,
7 acting at the request and direction of the law-enforcement officer,
8 may withdraw blood ~~for the purpose of determining the alcoholic~~
9 ~~content~~ to determine the alcohol concentration in the blood, or the
10 presence in the blood of a controlled substance, drug, or any
11 combination thereof. These limitations shall not apply to the taking
12 of a breath test ~~or a urine specimen~~. In withdrawing blood ~~for the~~
13 ~~purpose of determining the alcoholic content~~ to determine the
14 alcohol concentration in the blood, or the presence in the blood of
15 a controlled substance, drug, or any combination thereof, only a
16 previously unused and sterile needle and sterile vessel may be
17 utilized and the withdrawal shall otherwise be in strict accord with
18 accepted medical practices. A nonalcoholic antiseptic shall be used
19 for cleansing the skin prior to venapuncture. The person tested
20 may, at his or her own expense, have a doctor of medicine or
21 osteopathy, or registered nurse, or trained medical technician at
22 the place of his or her employment, of his or her own choosing,
23 administer a chemical test in addition to the test administered at
24 the direction of the law-enforcement officer. Upon the request of
25 the person who is tested, full information concerning the test taken

1 at the direction of the law-enforcement officer shall be made
2 available to him or her. No person who administers any such test
3 upon the request of a law-enforcement officer as herein defined, no
4 hospital in or with which such person is employed or is otherwise
5 associated or in which such test is administered, and no other
6 person, firm or corporation by whom or with which such person is
7 employed or is in any way associated, shall be in ~~anywise~~ any way
8 criminally liable for the administration of such test, or civilly
9 liable in damages to the person tested unless for gross negligence
10 or willful or wanton injury.

11 **§17C-5-7. Refusal to submit to tests; revocation of license or**
12 **privilege; consent not withdrawn if person arrested**
13 **is incapable of refusal; hearing.**

14 (a) If any person under arrest as specified in section four of
15 this article refuses to submit to any secondary chemical test, the
16 tests shall not be given: *Provided*, That prior to the refusal, the
17 person is given an oral warning and a written statement advising him
18 or her that his or her refusal to submit to the secondary test
19 finally designated will result in the revocation of his or her
20 license to operate a motor vehicle in this state for a period of at
21 least forty-five days and up to life; and that after fifteen minutes
22 following the warnings the refusal is considered final. The
23 arresting officer after that period of time expires has no further
24 duty to provide the person with an opportunity to take the secondary
25 test. The officer shall, within forty-eight hours of the refusal,

1 sign and submit to the Commissioner of Motor Vehicles a written
2 statement of the officer that: (1) He or she had reasonable grounds
3 to believe the person had been driving a motor vehicle in this state
4 while under the influence of alcohol, controlled substances or
5 drugs; (2) the person was lawfully placed under arrest for an
6 offense relating to driving a motor vehicle in this state while
7 under the influence of alcohol, controlled substances or drugs; (3)
8 the person refused to submit to the secondary chemical test finally
9 designated in the manner provided in section four of this article;
10 and (4) the person was given a written statement advising him or her
11 that his or her license to operate a motor vehicle in this state
12 would be revoked for a period of at least forty-five days and up to
13 life if he or she refused to submit to the secondary test finally
14 designated in the manner provided in section four of this article.
15 The signing of the statement required to be signed by this section
16 constitutes an oath or affirmation by the person signing the
17 statement that the statements contained in the statement are true
18 and that any copy filed is a true copy. The statement shall contain
19 upon its face a warning to the officer signing that to willfully
20 sign a statement containing false information concerning any matter
21 or thing, material or not material, is false swearing and is a
22 misdemeanor. Upon receiving the statement the commissioner shall
23 make and enter an order revoking the person's license to operate a
24 motor vehicle in this state for the period prescribed by this
25 section.

26 For the first refusal to submit to the designated secondary

1 chemical test, the commissioner shall make and enter an order
2 revoking the person's license to operate a motor vehicle in this
3 state for a period of one year or forty-five days, with an
4 additional one year of participation in the Motor Vehicle Alcohol
5 Test and Lock Program in accordance with the provisions of section
6 three-a, article five-a of this chapter: *Provided*, That a person
7 revoked for driving while under the influence of drugs is not
8 eligible to participate in the Motor Vehicle Test and Lock Program.
9 The application for participation in the Motor Vehicle Alcohol Test
10 and Lock Program shall be considered to be a waiver of the hearing
11 provided in section two of said article. If the person's license
12 has previously been revoked under the provisions of this section,
13 the commissioner shall, for the refusal to submit to the designated
14 secondary chemical test, make and enter an order revoking the
15 person's license to operate a motor vehicle in this state for a
16 period of ten years: *Provided, however*, That the license may be
17 reissued in five years in accordance with the provisions of section
18 three, article five-a of this chapter. If the person's license has
19 previously been revoked more than once under the provisions of this
20 section, the commissioner shall, for the refusal to submit to the
21 designated secondary chemical test, make and enter an order revoking
22 the person's license to operate a motor vehicle in this state for
23 a period of life. A copy of each order shall be forwarded to the
24 person by registered or certified mail, return receipt requested,
25 and shall contain the reasons for the revocation and shall specify
26 the revocation period imposed pursuant to this section. A

1 revocation shall not become effective until ten days after receipt
2 of the copy of the order. Any person who is unconscious or who is
3 otherwise in a condition rendering him or her incapable of refusal
4 shall be considered not to have withdrawn his or her consent for a
5 test of his or her blood or breath ~~or urine~~ as provided in section
6 four of this article and the test may be administered although the
7 person is not informed that his or her failure to submit to the test
8 will result in the revocation of his or her license to operate a
9 motor vehicle in this state for the period provided for in this
10 section. A revocation under this section shall run concurrently
11 with the period of any suspension or revocation imposed in
12 accordance with other provisions of this code and growing out of the
13 same incident which gave rise to the arrest for driving a motor
14 vehicle while under the influence of alcohol, controlled substances
15 or drugs and the subsequent refusal to undergo the test finally
16 designated in accordance with the provisions of section four of this
17 article.

18 (b) For the purposes of this section, where reference is made
19 to previous suspensions or revocations under this section, the
20 following types of suspensions or revocations shall also be regarded
21 as suspensions or revocations under this section:

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

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

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

8 (d) The refusal to submit to a blood test is not admissible in
9 a trial for the offense of driving a motor vehicle in this state
10 while under the influence of a controlled substance or drug.

11 **§17C-5-8. Interpretation and use of chemical test.**

12 (a) Upon trial for the offense of driving a motor vehicle in
13 this state while under the influence of alcohol, controlled
14 substances or drugs, or upon the trial of any civil or criminal
15 action arising out of acts alleged to have been committed by any
16 person driving a motor vehicle while under the influence of alcohol,
17 controlled substances or drugs, evidence of the amount of alcohol
18 in the person's blood at the time of the arrest or of the acts
19 alleged, as shown by a chemical analysis of his or her blood or
20 ~~breath or urine~~, is admissible, if the sample or specimen was taken
21 ~~within two hours from and after the time of arrest or of the acts~~
22 ~~alleged~~ the time period provided in subsection (g).

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

26 (1) Evidence that there was, at that time, five hundredths of

1 one percent or less, by weight, of alcohol in his or her blood, is
2 prima facie evidence that the person was not under the influence of
3 alcohol;

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

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

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

15 (1) The number of grams of alcohol per one hundred cubic
16 centimeters of blood;

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

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

21 ~~—(4)—~~The number of grams of alcohol per eighty-six milliliters
22 of serum.

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

- 1 (1) Marijuana metabolites;
- 2 (2) Cocaine metabolites;
- 3 (3) Amphetamines;
- 4 (4) Opiate metabolites;
- 5 (5) Phencyclidine (PCP);
- 6 (6) Benzodiazepines;
- 7 (7) Propoxyphene;
- 8 (8) Methadone;
- 9 (9) Barbiturates; and
- 10 (10) Synthetic narcotics.

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

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

20 (B) Legislative rules proposed by the Bureau of Public Health
21 must specify the test or tests that are approved for reliability of
22 result and ease of administration using scientific methods and
23 instrumentation generally accepted in the forensic community, and
24 must provide an approved method of administration which must be
25 followed in all such tests given under this section.

26 (C) The bureau shall review prescribed standards and methods

1 at least every two years to ensure that the methods and standards
2 are approved for reliability of result and ease of administration
3 using scientific methods and instrumentation generally accepted in
4 the forensic community.

5 (2) A chemical analysis of blood ~~or urine~~ to determine the
6 alcohol content ~~or the controlled substance or drug content~~ of blood
7 shall be conducted by a qualified laboratory or by the State Police
8 scientific laboratory of the ~~criminal identification bureau of the~~
9 West Virginia State Police Forensic Laboratory.

10 ~~(d)~~ (f) The provisions of this article do not limit the
11 introduction in any administrative or judicial proceeding of any
12 other competent evidence bearing on the question of whether the
13 person was under the influence of alcohol, controlled substances or
14 drugs.

15 (g) For the purposes of the admissibility of a chemical test
16 under subsection (a):

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

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

23 (h) The results of any test administered pursuant to this
24 section for the purpose of detecting the presence of any controlled
25 substance shall not be admissible as evidence in a criminal
26 prosecution for the possession of a controlled substance.

1 **§17C-5-9. Right to demand test.**

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

13 **§17C-5-12. Report to the Legislature.**

14 On or before December 31, 2013, the West Virginia State Police
15 Forensic Laboratory shall submit to the Joint Committee on
16 Government and Finance a report that includes the following:

17 (1) Recommendations for the minimum levels of those drugs or
18 controlled substances contained in subsection (d), section eight of
19 this article, that must be present in a person's blood in order for
20 the test to be admitted as prima facie evidence that the person was
21 under the influence of a controlled substance or drug in a
22 prosecution for the offense of driving a motor vehicle in this
23 state; and

24 (2) Recommendations for the minimum levels of those drugs or
25 controlled substances contained in subsection (d), section eight of
26 this article, that laboratories approved to test blood for drug or

1 controlled substance content can reliably identify and measure for
2 the concentrations of drugs, controlled substances and their
3 metabolites, in blood.