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Senate Bill No. 181

(By Senators Kessler (Mr. President) and M. Hall,
By Request of the Executive)

[Introduced February 15, 2013; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-1-67; and to amend and reenact §17C-5-4 and §17C-5-6 of said code, all relating to improving enforcement of drugged driving offenses; defining "drug"; providing implied consent to test for controlled substances or drugs; including controlled substances and drugs in blood test administration procedures; and making other clerical changes.

Be it enacted by the Legislature of West Virginia:

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

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

2 **§17C-1-67. Drug.**

3 "Drug" means any substance, other than alcohol, that when
4 taken into the human body can impair the ability of a person to
5 operate a vehicle safely and in compliance with traffic regulations
6 and the laws of the road.

7 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

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

17 (b) A preliminary breath analysis may be administered in
18 accordance with the provisions of section five of this article
19 whenever a law-enforcement officer has reasonable cause to believe
20 a person has committed an offense prohibited by section two of this
21 article or by an ordinance of a municipality of this state which
22 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
10 law-enforcement officer shall designate which type of secondary
11 test is to be administered: *Provided*, That if the test designated
12 is a blood test and the person arrested refuses to submit to the
13 blood test, then the law-enforcement officer making the arrest
14 shall 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

1 operate a motor vehicle in this state for a period of at least one
2 year and up to life.

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

19 (g) If the arresting officer lacks proper training in the
20 administration of a secondary chemical test, then any other
21 law-enforcement officer who has received training in the
22 administration of the secondary chemical test to be administered
23 may, upon the request of the arresting law-enforcement officer and

1 in his or her presence, conduct the secondary test. The results of
2 a test conducted pursuant to this subsection may be used in
3 evidence to the same extent and in the same manner as if the test
4 had been conducted by the arresting law-enforcement officer.

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

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

20 (j) A law-enforcement officer who has reasonable cause to
21 believe that person has committed an offense prohibited by section
22 eighteen, article seven, chapter twenty of this code, relating to
23 the operation of a motorboat, jet ski or other motorized vessel,

1 shall follow the provisions of this section in administering, or
2 causing to be administered, a preliminary breath analysis and the
3 secondary chemical test of the accused person's blood, breath, or
4 urine for the purpose of determining the alcoholic content and the
5 controlled substance and drug content of his or her blood.

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

10 Only a doctor of medicine or osteopathy, or registered nurse,
11 or trained medical technician at the place of his or her employment,
12 acting at the request and direction of the law-enforcement officer,
13 may withdraw blood for the purpose of determining the alcoholic
14 content thereof and the controlled substance and drug content
15 thereof. These limitations shall not apply to the taking of a
16 breath test or a urine specimen. In withdrawing blood for the
17 purpose of determining the alcoholic content thereof and the
18 controlled substance and drug content thereof, only a previously
19 unused and sterile needle and sterile vessel may be utilized and the
20 withdrawal shall otherwise be in strict accord with accepted medical
21 practices. A nonalcoholic antiseptic shall be used for cleansing
22 the skin prior to venapuncture. The person tested may, at his or
23 her own expense, have a doctor of medicine or osteopathy, or

1 registered nurse, or trained medical technician at the place of his
2 or her employment, of his or her own choosing, administer a chemical
3 test in addition to the test administered at the direction of the
4 law-enforcement officer. Upon the request of the person who is
5 tested, full information concerning the test taken at the direction
6 of the law-enforcement officer shall be made available to him or
7 her. No person who administers any such test upon the request of
8 a law-enforcement officer as herein defined, no hospital in or with
9 which such person is employed or is otherwise associated or in which
10 such test is administered, and no other person, firm or corporation
11 by whom or with which such person is employed or is in any way
12 associated, shall be in ~~anywise~~ any way criminally liable for the
13 administration of such test, or civilly liable in damages to the
14 person tested unless for gross negligence or willful or wanton
15 injury.

NOTE: The purpose of this bill is to improve enforcement of laws against drugged driving. The bill defines "drug" and provides that implied consent applies to testing for controlled substances or drugs upon arrest of a driver in this state.

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

§17C-1-67 is new; therefore, underscoring and strike-throughs are omitted.