

**H. B. 2380**

(By Delegates Folk, McGeehan, Ihle, Faircloth, Frich, Householder,  
Shott, Kurcaba, Weld, Sobonya and J. Nelson)

[Introduced January 26, 2015; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §17C-5-4 of the Code of West Virginia, 1931, as amended, relating to requiring the issuance of a search warrant 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.

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

That §17C-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

(a) The Legislature finds that:

(1) The Fourth Amendment to the United States Constitution requires law enforcement to have probable cause and a valid search warrant before searching an individual;

1           (2) In Missouri v. McNeely, 133 S.Ct. 1552 (2013), the Supreme Court of the United States  
2 noted that a compelled test of an individual's blood is "an invasion of bodily integrity" that  
3 "implicates an individual's most personal and deep-rooted expectations of privacy."

4           (3) In Missouri v. McNeely, 133 S.Ct. 1552 (2013), the Supreme Court of the United States  
5 held that in the absence of exigent circumstances, a compelled blood test without a search warrant  
6 violates an individual's Fourth Amendment right against unreasonable searches and seizures.

7           ~~(a)~~ (b) Any person who drives a motor vehicle in this state is considered to have given his  
8 or her consent by the operation of the motor vehicle to a preliminary breath analysis ~~and a secondary~~  
9 ~~chemical test of either his or her blood or breath~~ and, upon issuance of a search warrant, a secondary  
10 chemical test of the driver's blood to determine the alcohol concentration in his or her blood, or the  
11 concentration in the person's body of a controlled substance, drug, or any combination thereof.

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

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

22           (e) Notwithstanding any provision of this code, a warrant is required for any nonconsensual

1 test of a person's blood, and the dissipation of alcohol in a person's blood does not constitute an  
2 exigent circumstance, justifying an exception to the warrant requirement for nonconsensual blood  
3 testing in a criminal investigation.

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

8       ~~(e)~~ (g) Any person to whom a preliminary breath test is administered who is arrested shall  
9 be given a written statement advising him or her that his or her refusal to submit to the secondary  
10 chemical test pursuant to subsection (d) of this section will not result in the revocation of his or her  
11 license to operate a motor vehicle in this state. ~~for a period of at least forty-five days and up to life.~~

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

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

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

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

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

1 alcohol.

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

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

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