

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENROLLED

House Bill 5406

BY DELEGATES AKERS, FUNKHOUSER, KIMBLE, MALLOW,
FLANIGAN, JENNINGS, MARPLE, SHAMBLIN, ZATEZALO,
PHILLIPS, AND HECKERT

(BY THE REQUEST OF THE DEPARTMENT OF HOMELAND SECURITY –
WEST VIRGINIA STATE POLICE)

[Passed March 12, 2026; in effect 90 days from
passage (June 10, 2026)]

1 AN ACT to amend and reenact §17C-5-4, §17C-5-5, §17C-5-6, §17C-5-6a, §17C-5-8, and §17C-
2 5-10 of the Code of West Virginia, 1931, as amended, relating to driving under the
3 influence; making the West Virginia State Police Forensic Laboratory the certifying entity
4 for secondary chemical tests, method and administration of secondary chemical tests, and
5 approval of preliminary breath analysis devices and use; eliminating rule-making authority
6 of the Bureau of Public Health; providing rule-making authority for the State Police;
7 correcting blood alcohol levels related to juveniles; removing propoxyphene from the list
8 of substances tested for in a chemical analysis of blood; eliminating outdated references
9 to urine collection and analysis; permitting those trained in phlebotomy to draw blood; and
10 making technical corrections.

Be it enacted by the Legislature of West Virginia:

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 considered to have given his or
2 her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary
3 chemical test of either his or her blood or breath to determine the alcohol concentration in his or
4 her blood, or the concentration in the person's body of a controlled substance, drug, or any
5 combination thereof.

6 (b) A preliminary breath analysis may be administered in accordance with the provisions
7 of §17C-5-5 of this code whenever a law-enforcement officer has reasonable cause to believe a
8 person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a
9 municipality of this state which has the same elements as an offense described in §17C-5-2 of
10 this code.

11 (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be
12 administered at the direction of the arresting law-enforcement officer having probable cause to

13 believe the person has committed an offense prohibited by §17C-5-2 of this code or by an
14 ordinance of a municipality of this state which has the same elements as an offense described in
15 said section: *Provided*, That absent written consent of the person, a secondary test of blood may
16 not be performed without issuance of a warrant signed by a magistrate or a circuit judge.

17 (d) The law-enforcement agency that employs the arresting law-enforcement officer shall
18 designate the secondary tests to be administered. Notwithstanding §17C-5-7a of this code, the
19 refusal to submit to a blood test only may not result in the revocation of the arrested person's
20 license to operate a motor vehicle in this state.

21 (e) Any person to whom a preliminary breath test is administered who is arrested shall be
22 advised verbally and given a written statement advising him or her of the following:

23 (1) That the person's refusal to submit to the secondary chemical test, designated
24 pursuant to subsection (d) of this section, will result in the revocation of his or her license to
25 operate a motor vehicle for a period of at least 45 days and up to life;

26 (2) That, if a designated secondary chemical test is taken, the results of the test may be
27 used against him or her in court as evidence of violating §17C-5-2 of this code or an ordinance of
28 a municipality of this state which has the same elements as an offense described in said section;
29 and

30 (3) That, if the person first submits to the requested secondary chemical test, the person
31 has the right to have a test or tests of his or her blood performed as provided in §17C-5-9 of this
32 code.

33 (f) Any law-enforcement officer who has been properly trained in the administration of any
34 secondary chemical test authorized by this article, including, but not limited to, certification by the
35 West Virginia State Police Forensic Laboratory in the operation of any equipment required for the
36 collection and analysis of a breath sample, may conduct the test at any location in the county
37 wherein the arrest is made: *Provided*, That the law-enforcement officer may conduct the test at
38 the nearest available properly functioning secondary chemical testing device located outside the

39 county in which the arrest was made, if: (1) There is no properly functioning secondary chemical
40 testing device located within the county the arrest was made; or (2) There is no magistrate
41 available within the county the arrest was made for the arraignment of the person arrested. A
42 law-enforcement officer who is directing that a secondary chemical test be conducted has the
43 authority to transport the person arrested to where the secondary chemical testing device is
44 located.

45 (g) If the arresting officer lacks proper training in the administration of a secondary
46 chemical test, then any other law-enforcement officer who has received training in the
47 administration of the secondary chemical test to be administered may, upon the request of the
48 arresting law-enforcement officer and in his or her presence, conduct the secondary test. The
49 results of a test conducted pursuant to this subsection may be used in evidence to the same
50 extent and in the same manner as if the test had been conducted by the arresting law-enforcement
51 officer.

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

54 (i) (1) For the purpose of this article, the term "law-enforcement officer" or "police officer"
55 shall have the same meaning as the term "law-enforcement officer" is defined pursuant to §30-
56 29-1 of this code.

57 (2) In addition to standards promulgated by the Governor's Committee on Crime,
58 Delinquency, and Correction, pursuant to §30-29-3 of this code, governing the qualification of
59 law-enforcement officers and the entry-level law-enforcement training curricula, the Governor's
60 Committee on Crime, Delinquency, and Correction shall require the satisfactory completion of a
61 minimum of not less than six hours of training in the recognition of impairment in drivers who are
62 under the influence of controlled substances or drugs other than alcohol.

63 (3) In addition to standards promulgated by the Governor's Committee on Crime,
64 Delinquency, and Correction, pursuant to §30-29-3 of this code, establishing standards governing

65 in-service law-enforcement officer training curricula and in-service supervisory level training
66 curricula, the Governor's Committee on Crime, Delinquency, and Correction shall require the
67 satisfactory completion of a minimum of not less than six hours of training in the recognition of
68 impairment in drivers who are under the influence of controlled substances or drugs other than
69 alcohol.

70 (4) A law-enforcement officer who has not satisfactorily completed the minimum number
71 of hours of training in the recognition of impairment in drivers who are under the influence of
72 controlled substances or drugs other than alcohol, required by subdivisions (2) and (3) of this
73 subsection, may not require any person to submit to secondary chemical test of his or her blood
74 for the purposes of determining the concentration in the person's body of a controlled substance,
75 drug, or any combination thereof.

76 (j) A law-enforcement officer who has reasonable cause to believe that a person has
77 committed an offense prohibited by §20-7-18 of this code, relating to the operation of a motorboat,
78 jet ski, or other motorized vessel, shall follow the provisions of this section when administering,
79 or causing to be administered, a preliminary breath analysis and, incidental to a lawful arrest, a
80 secondary chemical test of the accused person's blood or breath to determine the alcohol
81 concentration in his or her blood, or the concentration in the person's body of a controlled
82 substance, drug, or any combination thereof.

§17C-5-5. Preliminary analysis of breath to determine alcoholic content of blood.

1 When a law-enforcement officer has reason to believe a person has committed an offense
2 prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has
3 the same elements as an offense described in §17C-5-2 of this code, the law-enforcement officer
4 may require such person to submit to a preliminary breath analysis for the purpose of determining
5 such person's blood alcohol content. Such breath analysis must be administered as soon as
6 possible after the law-enforcement officer has a reasonable belief that the person has been driving
7 while under the influence of alcohol, controlled substances or drugs. Any preliminary breath

8 analysis required under this section must be administered with a device and in a manner approved
9 by the West Virginia State Police Forensic Laboratory for that purpose. The results of a preliminary
10 breath analysis shall be used solely for the purpose of guiding the officer in deciding whether an
11 arrest should be made. When a driver is arrested following a preliminary breath analysis, the tests
12 as hereinafter provided in this article shall be administered in accordance with the provisions
13 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, or trained medical
2 technician, or any professional trained in phlebotomy at the place of his or her employment, acting
3 at the request and direction of the law-enforcement officer, may withdraw blood to determine the
4 alcohol concentration in the blood, or the concentration in the blood of a controlled substance,
5 drug, or any combination thereof. These limitations shall not apply to the taking of a breath test.
6 In withdrawing blood to determine the alcohol concentration in the blood, or the presence in the
7 blood of a controlled substance, drug, or any combination thereof, only a previously unused and
8 sterile needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict
9 accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the
10 skin prior to venapuncture. The person tested may, at his or her own expense, have a doctor of
11 medicine or osteopathy, or registered nurse, or trained medical technician, or any professional
12 trained in phlebotomy at the place of his or her employment, of his or her own choosing, administer
13 a chemical test in addition to the test administered at the direction of the law-enforcement officer.
14 Upon the request of the person who is tested, full information concerning the test taken at the
15 direction of the law-enforcement officer shall be made available to him or her. No person who
16 administers any such test upon the request of a law-enforcement officer as herein defined, no
17 hospital in or with which such person is employed or is otherwise associated or in which such test
18 is administered, and no other person, firm or corporation by whom or with which such person is

19 employed or is in any way associated, shall be in any way criminally liable for the administration
20 of such test, or civilly liable in damages to the person tested unless for gross negligence or willful
21 or wanton injury.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

1 (a) A preliminary breath analysis may be administered to a child whenever a law-
2 enforcement official has reasonable cause to believe the child to have been driving a motor
3 vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's
4 blood alcohol content. The breath analysis must be administered as soon as possible after the
5 law-enforcement officer arrives at a reasonable belief that the child has been driving a motor
6 vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis
7 administered pursuant to this subsection must be administered with a device and in a manner
8 approved by the West Virginia State Police Forensic Laboratory for that purpose. If a preliminary
9 breath analysis is administered, the results shall be used solely for the purpose of guiding the
10 officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol
11 concentration in his or her blood of .02 of one percent or more, by weight, and should, therefore,
12 be taken into custody to administer a secondary test in accordance with the provisions of this
13 section.

14 (b) A child may be taken into custody by a law-enforcement official without a warrant or
15 court order if the official has reasonable grounds to believe the child to have been driving a motor
16 vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is
17 administered and the results of the analysis indicate that the child has an alcohol concentration
18 in his or her blood of less than .02 of one percent, by weight, the child may not be taken into
19 custody unless other grounds exist under §49-4-705(b) of this code. Upon taking a child into
20 custody pursuant to the provisions of this section, the official shall take all reasonable steps to

21 cause notification to be made to the child's parent or custodian or, if the parent or custodian
22 cannot be located, to a close relative.

23 (c) Upon taking a child into custody pursuant to this section, the official shall take the child
24 to a facility where a secondary test of the child's blood may be administered at the direction of the
25 official or a test of the child's breath may be administered by the official. The law-enforcement
26 agency by which such law-enforcement official is employed shall designate whether the
27 secondary test is a test of either blood or breath: *Provided*, That if the test is a blood test and the
28 child refuses to submit to the blood test, then the law-enforcement official taking the child into
29 custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the
30 provisions of §17C-5-7a of this code, a refusal to submit to a blood test only shall not result in
31 the revocation of the child's license to operate a motor vehicle in this state. Any child taken into
32 custody pursuant to this section shall be given a written statement advising him or her that a
33 refusal to submit to a secondary test of either blood or breath, as finally designated by the law-
34 enforcement agency or official in accordance with this subsection, will result in the suspension of
35 his or her license to operate a motor vehicle in this state for a period of at least 30 days or a
36 revocation of the license for a period up to life.

37 (d) If the law-enforcement official taking the child into custody is employed by a law-
38 enforcement agency which does not have available the testing equipment or facilities necessary
39 to conduct any secondary breath test which may be administered pursuant to the provisions of
40 this section, then the official who took the child into custody may request another qualified person
41 to administer a secondary breath test: *Provided*, That the breath test shall be administered in the
42 presence of the official who took the child into custody. The results of the breath test may be used
43 in evidence to the same extent and in the same manner as if the test had been conducted by the
44 law-enforcement official who took the child into custody. The qualified person administering the
45 breath test must be a member of the State Police, the sheriff of the county where the child was

46 taken into custody, or any deputy of the sheriff or a law-enforcement official of another municipality
47 within the county wherein the child was taken into custody. Only the person actually administering
48 the secondary breath test is competent to testify as to the results and the veracity of the test. If
49 the secondary test is a blood test, the test shall be conducted in accordance with the provisions
50 of §17C-5-6 of this code.

51 (e) After taking the child into custody, if the law-enforcement official has reasonable cause
52 to believe that the act of the child in driving the motor vehicle is such that it would provide grounds
53 for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an
54 adult, then the official shall proceed to treat the child in the same manner as any other child taken
55 into custody without a warrant or court order, in accordance with the provisions of §17C-5-8 of
56 this code.

57 (f) If the results of any secondary test administered pursuant to this section indicate that
58 the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood
59 of .08 of one percent or less, by weight, and if the law-enforcement official does not have
60 reasonable cause to believe that the act of the child in driving the motor vehicle is such that it
61 would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this
62 code if the child were an adult, then the official shall release the child: *Provided*, That if the results
63 of any secondary test administered pursuant to this section indicate that the child, at the time of
64 driving the motor vehicle, had an alcohol concentration in his or her blood of .02 of one percent
65 or more, by weight, the child shall only be released to a parent or custodian, or to some other
66 responsible adult.

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

1 (a) Upon trial for the offense of driving a motor vehicle in this state while under the
2 influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action
3 arising out of acts alleged to have been committed by any person driving a motor vehicle while

4 under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol
5 in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical
6 analysis of his or her blood or breath, is admissible, if the sample or specimen was taken within
7 the time period provided in subsection (g).

8 (b) The evidence of the concentration of alcohol in the person's blood at the time of the
9 arrest or the acts alleged gives rise to the following presumptions or has the following effect:

10 (1) Evidence that there was, at that time, .05 of one percent or less, by weight, of alcohol
11 in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;

12 (2) Evidence that there was, at that time, more than .05 of one percent and less than .08
13 of one percent, by weight, of alcohol in the person's blood is relevant evidence, but it is not to be
14 given prima facie effect in indicating whether the person was under the influence of alcohol;

15 (3) Evidence that there was, at that time, .08 of one percent or more, by weight, of alcohol
16 in his or her blood, shall be admitted as prima facie evidence that the person was under the
17 influence of alcohol.

18 (c) A determination of the percent, by weight, of alcohol in the blood shall be based upon
19 a formula of:

20 (1) The number of grams of alcohol per 100 cubic centimeters of blood;

21 (2) The number of grams of alcohol per 210 liters of breath; or

22 (3) The number of grams of alcohol per 86 milliliters of serum.

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

26 (1) Marijuana metabolites;

27 (2) Cocaine metabolites;

28 (3) Amphetamines;

29 (4) Opiate metabolites;

30 (5) Phencyclidine (PCP);

31 (6) Benzodiazepines;

32 (7) Methadone;

33 (8) Barbiturates; and

34 (9) Synthetic narcotics.

35 (e) (1) A chemical analysis of a person's blood or breath, in order to give rise to the
36 presumptions or to have the effect provided for in this section, must be performed in accordance
37 with methods and standards approved by the West Virginia State Police Forensic Laboratory.

38 (A) The West Virginia State Police Forensic Laboratory shall prescribe, by legislative rules
39 promulgated pursuant to §29A-3-1 *et seq.* of this code, methods and standards for the chemical
40 analysis of a person's blood or breath.

41 (B) Legislative rules proposed by the West Virginia State Police Forensic Laboratory must
42 specify the test or tests that are approved for reliability of result and ease of administration using
43 scientific methods and instrumentation generally accepted in the forensic community, and must
44 provide an approved method of administration which must be followed in all such tests given
45 under this section.

46 (C) The West Virginia State Police Forensic Laboratory shall review prescribed standards
47 and methods at least every two years to ensure that the methods and standards are approved for
48 reliability of result and ease of administration using scientific methods and instrumentation
49 generally accepted in the forensic community.

50 (2) A chemical analysis of blood to determine the alcohol content or the controlled
51 substance or drug content of blood shall be conducted by an accredited laboratory or by the West
52 Virginia State Police Forensic Laboratory.

53 (f) The provisions of this article do not limit the introduction in any administrative or judicial
54 proceeding of any other competent evidence bearing on the question of whether the person was
55 under the influence of alcohol, controlled substances or drugs.

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

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

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

61 (h) The results of any test administered pursuant to this section for the purpose of
62 detecting the concentration of any controlled substance shall not be admissible as evidence in a
63 criminal prosecution for the possession of a controlled substance.

§17C-5-10. Fee for withdrawing blood sample; payment of fees.

1 A reasonable fee shall be allowed to the person withdrawing a blood sample at the request
2 and direction of a law-enforcement officer in accordance with the provisions of this article. If the
3 person whose blood sample was withdrawn was arrested and charged with a violation of §17C-
4 5-2 of this code, the county having venue of such charge shall pay the fee, and if the person
5 arrested is subsequently convicted of such charge, such fee shall be taxed as a part of the costs
6 of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to
7 the contrary, into the General Fund of said county. If the person whose blood sample was
8 withdrawn was arrested and charged with a violation of a similar ordinance of any municipality,
9 said municipality shall pay the fee, and if the person arrested is subsequently convicted of such
10 charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid,
11 notwithstanding any other provision of this code to the contrary, into the General Fund of said
12 municipality.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2026.

.....
Governor