WEST VIRGINIA CODE CHAPTER 17C ARTICLE 5B

WV Legislature

§17C-5B-1. Blood test for alcohol in drivers and adult pedestrians killed in motor vehicle crashes; time limit for conducting test; who may conduct test; express consent to withdraw blood from dead body granted; granting civil and criminal immunity to person conducting test; fee for test.

(a) When any motor vehicle driver or adult pedestrian dies in a motor vehicle crash in this state or dies within four hours after having been involved in a motor vehicle crash in this state, the physician in attendance, or law-enforcement officer having knowledge of such death, or the funeral director, or any other person present when such death occurred, shall immediately report such death to the medical examiner of the county in which such death occurred. Upon receipt of such notice, the medical examiner shall take charge of the dead body and shall conduct, or shall cause to be conducted, within 12 hours after receiving such notice and before the dead body is embalmed, a blood test to determine the presence and percentage concentration of alcohol in the blood of such dead body.

(b) The blood test required under this section shall be conducted only by a person qualified to conduct an autopsy under §61-12-3 *et seq*. of this code or by a doctor of medicine, doctor of osteopathy, registered nurse, trained medical technician at the place of his or her employment or county coroner who is deemed qualified by the office of medical examinations to conduct such blood test.

(c) Any person who is to conduct a blood test under the provisions of this section is hereby expressly authorized to withdraw blood from the dead body in the quantity necessary to conduct such blood test. Any person withdrawing blood from the dead body and testing such blood and any hospital or clinic in which such blood is withdrawn and tested under the provisions of this section shall be immune from all civil and criminal liability which might otherwise be imposed.

(d) Any person conducting a blood test under the provisions of this section shall receive a standardized fee in the amount determined by the office of medical examinations, which fee shall be paid from funds appropriated to the office of medical examinations.

(e) Nothing contained in this section shall be construed to preclude the taking of a blood test by any other person having the right to take any such test or cause such test to be taken while the medical examiner has charge of the body.

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§17C-5B-1a. Drug and alcohol testing of surviving motor vehicle operator where fatality involved.

(a) When a law-enforcement officer has probable cause to believe a surviving operator of a motor vehicle in a crash resulting in the death of another person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in §17C-5-2 of this code, the law-enforcement officer may require the surviving operator to submit to a preliminary breath analysis for the purpose of determining his or her blood alcohol content.

(b) When a law-enforcement officer has probable cause to believe a surviving operator of a motor vehicle in a crash resulting in the death of another person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in §17C-5-2 of this code, the law-enforcement officer may require the surviving operator to submit to a secondary test of blood or breath for the purpose of determining his or her alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof: *Provided*, That absent written consent of the surviving operator, a secondary test of blood may not be performed without issuance of a warrant signed by a magistrate or a circuit judge.

(c) Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood to determine the alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof.

(d) Any person conducting a test required under the provisions of this section is immune from all civil and criminal liability which might otherwise be imposed.

(e) Nothing in this section shall be construed to abrogate, expand, or otherwise modify the existing testing requirements for individuals who do not survive motor vehicle crashes as more fully set forth in §17C-5B-1 of this code.

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§17C-5B-2. To whom and how county medical examiners report results of blood tests; such reports admissible as evidence; use of reports only for statistical and highway safety purposes.

(a) Each county medical examiner shall immediately report the results of each blood test conducted under the authority of §17C-5B-1 of this code by him or her, or conducted at his or her request, to the chief medical examiner of the Office of the Chief Medical Examiner and to the West Virginia State Police. Results of such blood test or any report thereof may be admissible in evidence, if material, in any action or proceeding of any kind in any court or before any tribunal, board, or agency.

(b) The West Virginia State Police shall compile the data from all such reports submitted to it on a monthly basis. The West Virginia State Police shall forward such compilations to the Governor's Highway Safety Program, and the Division of Motor Vehicles. Such compilations shall be for statistical purposes and highway safety information and be disclosed or revealed in any manner necessary. The identity of any dead person whose blood was tested under the provisions of §17C-5B-1 of this code may be disclosed or revealed when necessary for evidence in any action or proceeding of any kind in any court or before any tribunal, board, or agency.

(c) The West Virginia State Police, the Governor's Highway Safety Program, and the Division of Motor Vehicles shall make use of such compilations in a manner to provide accurate and useful statistical information to government and the public relative to achieving a reduction in motor vehicle crashes arising in whole or in part from the imbibing of alcohol by motor vehicle drivers and adult pedestrians.

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