WEST VIRGINIA CODE: §17c-5B-1A

§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.

WV Legislature