WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2513

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
(By Request of the Executive)

Passed April 13, 2013

In effect ninety days from passage.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections designated §17C-1-67 and §17C-1-68; to amend and reenact §17C-5-4, §17C-5-6, §17C-5-7, §17C-5-8, and §17C-5-9 of said code; and to amend said code by adding thereto a new section, designated §17C-5-12, all relating to the enforcement of laws prohibiting the operation of a motor vehicle, motorboat, jet ski or other motorized vessel while under the influence of alcohol controlled substance, or drugs generally; defining “drug” and “controlled substance”; correcting reference to period of license suspension for failure to submit to certain tests
to provide consistency with other provisions of law; authorizing law-enforcement agencies to designate more than one secondary chemical test to be administered; maintaining the exception to a license revocation for the refusal to submit to a blood test; requiring training of law-enforcement officers; including controlled substances and drugs in blood test administration procedures; providing the drugs or classes of drug to be included in a chemical analysis; requiring the Bureau for Public Health to prescribe minimum levels of substance or drugs in order to be admissible; authorizing emergency rules; requiring the Bureau for Public Health to review current methods and standards; requiring a blood specimen to test for controlled substances or drugs to be taken within four hours of arrest; prohibiting testing results to be used as evidence in a criminal prosecution for the possession of a controlled substance; providing that refusal to provide a blood sample may be admissible in a criminal prosecution for operation of a motor vehicle while under the influence of alcohol controlled substance or drugs; eliminating urine test as a possible secondary chemical test; and requiring the Bureau for Public Health to report to the Legislature.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections designated § 17C-1-67 and § 17C-1-68; that § 17C-5-4, § 17C-5-6, § 17C-5-7, § 17C-5-8 and § 17C-5-9 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated § 17C-5-12, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-67. Drug.

1 "Drug" has the same meaning as set forth in section one hundred one, article one, chapter sixty-a of this code, the Uniform Controlled Substances Act, that when taken into the human body can impair the ability of a person to operate a
vehicle safely and in compliance with traffic regulations and the
laws of the road.

§17C-1-68. Controlled substance.

"Controlled substance" means any substance classified under
the provisions of chapter sixty-a of this code, the Uniform
Controlled Substances Act, and includes all substances listed on
Schedules I through V, inclusive, of article two of said chapter,
as revised.

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.

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

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

(c) A secondary test of blood or breath is incidental to a
lawful arrest and is to be administered at the direction of the
arresting law-enforcement officer having probable cause to
believe the person has committed an offense prohibited by
section two of this article or by an ordinance of a municipality of
(d) The law-enforcement agency that employs the arresting law-enforcement officer shall designate the secondary tests to be administered: Notwithstanding the provisions of section seven of this article, the refusal to submit to a blood test only may not result in the revocation of the arrested person’s license to operate a motor vehicle in this state.

(e) Any person to whom a preliminary breath test is administered who is arrested shall be given a written statement advising him or her that his or her refusal to submit to the secondary chemical test pursuant to subsection (d) of this section will result in the revocation of his or her license to operate a motor vehicle in this state for a period of at least forty-five days and up to life.

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

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

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

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

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

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

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

Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her
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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. These limitations shall not apply to the taking of a breath test. In withdrawing blood to determine the alcohol concentration in the blood, or the presence in the blood of a controlled substance, drug, or any combination thereof, only a previously unused and sterile needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venapuncture. The person tested may, at his or her own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, of his or her own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer.

Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him or her. No person who administers any such test upon the request of a law-enforcement officer as herein defined, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered, and no other person, firm or corporation by whom or with which such person is employed or is in any way associated, shall be in any way criminally liable for the administration of such test, or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the tests shall not be given: Provided, That prior to the refusal, the
person is given an oral warning and a written statement advising
him or her that his or her refusal to submit to the secondary test
finally designated will result in the revocation of his or her
license to operate a motor vehicle in this state for a period of at
least forty-five days and up to life; and that after fifteen minutes
following the warnings the refusal is considered final. The
arresting officer after that period of time expires has no further
duty to provide the person with an opportunity to take the
secondary test. The officer shall, within forty-eight hours of the
refusal, sign and submit to the Commissioner of Motor Vehicles
a written statement of the officer that: (1) He or she had probable
cause to believe the person had been driving a motor vehicle in
this state while under the influence of alcohol, controlled
substances or drugs; (2) the person was lawfully placed under
arrest for an offense relating to driving a motor vehicle in this
state while under the influence of alcohol, controlled substances
or drugs; (3) the person refused to submit to the secondary
chemical test finally designated in the manner provided in
section four of this article; and (4) the person was given a written
statement advising him or her that his or her license to operate
a motor vehicle in this state would be revoked for a period of at
least forty-five days and up to life if he or she refused to submit
to the secondary test finally designated in the manner provided
in section four of this article. The signing of the statement
required to be signed by this section constitutes an oath or
affirmation by the person signing the statement that the
statements contained in the statement are true and that any copy
filed is a true copy. The statement shall contain upon its face a
warning to the officer signing that to willfully sign a statement
containing false information concerning any matter or thing,
material or not material, is false swearing and is a misdemeanor.
Upon receiving the statement the commissioner shall make and
enter an order revoking the person’s license to operate a motor
vehicle in this state for the period prescribed by this section.

For the first refusal to submit to the designated secondary
chemical test, the commissioner shall make and enter an order
revoking the person's license to operate a motor vehicle in this
state for a period of one year or forty-five days, with an
additional one year of participation in the Motor Vehicle Alcohol
Test and Lock Program in accordance with the provisions of
section three-a, article five-a of this chapter: Provided, That a
person revoked for driving while under the influence of drugs is
not eligible to participate in the Motor Vehicle Test and Lock
Program. The application for participation in the Motor Vehicle
Alcohol Test and Lock Program shall be considered to be a
waiver of the hearing provided in section two of said article. If
the person's license has previously been revoked under the
provisions of this section, the commissioner shall, for the refusal
to submit to the designated secondary chemical test, make and
enter an order revoking the person's license to operate a motor
vehicle in this state for a period of ten years: Provided, however,
That the license may be reissued in five years in accordance with
the provisions of section three, article five-a of this chapter. If
the person's license has previously been revoked more than once
under the provisions of this section, the commissioner shall, for
the refusal to submit to the designated secondary chemical test,
make and enter an order revoking the person's license to operate
a motor vehicle in this state for a period of life. A copy of each
order shall be forwarded to the person by registered or certified
mail, return receipt requested, and shall contain the reasons for
the revocation and shall specify the revocation period imposed
pursuant to this section. A revocation shall not become effective
until ten days after receipt of the copy of the order. Any person
who is unconscious or who is otherwise in a condition rendering
him or her incapable of refusal shall be considered not to have
withdrawn his or her consent for a test of his or her blood or
breath as provided in section four of this article and the test may
be administered although the person is not informed that his or
her failure to submit to the test will result in the revocation of his
or her license to operate a motor vehicle in this state for the
period provided for in this section. A revocation under this
section shall run concurrently with the period of any suspension
or revocation imposed in accordance with other provisions of this code and growing out of the same incident which gave rise to the arrest for driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and the subsequent refusal to undergo the test finally designated in accordance with the provisions of section four of this article.

(b) For the purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of suspensions or revocations shall also be regarded as suspensions or revocations under this section:

(1) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two of this article for conduct which occurred on or after June 10, 1983; and

(2) Any revocation under the provisions of section one or two, article five-a of this chapter for conduct which occurred on or after June 10, 1983.

(c) A person whose license to operate a motor vehicle in this state has been revoked shall be afforded an opportunity to be heard, in accordance with the provisions of section two, article five-a of this chapter.

(d) The refusal to submit to a blood test may be admissible at the court’s discretion in a trial for the offense of driving a motor vehicle in this state while under the influence of alcohol a controlled substance or drug or the combination of alcohol and drugs.

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

(a) Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled
substances or drugs, or upon the trial of any civil or criminal
action arising out of acts alleged to have been committed by any
person driving a motor vehicle while under the influence of
alcohol, controlled substances or drugs, evidence of the amount
of alcohol in the person's blood at the time of the arrest or of the
acts alleged, as shown by a chemical analysis of his or her blood
or breath, is admissible, if the sample or specimen was taken
within the time period provided in subsection (g).

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

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

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

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

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

(1) The number of grams of alcohol per one hundred cubic
centimeters of blood;

(2) The number of grams of alcohol per two hundred ten
liters of breath; or
(3) The number of grams of alcohol per eighty-six milliliters of serum.

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

(1) Marijuana metabolites;
(2) Cocaine metabolites;
(3) Amphetamines;
(4) Opiate metabolites;
(5) Phencyclidine (PCP);
(6) Benzodiazepines;
(7) Propoxyphene;
(8) Methadone;
(9) Barbiturates; and
(10) Synthetic narcotics.

(e) (1) A chemical analysis of a person's blood or breath, in order to give rise to the presumptions or to have the effect provided for in this section, must be performed in accordance with methods and standards approved by the state Bureau for Public Health.

(A) The Bureau for Public Health shall prescribe, by legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, methods and standards for the chemical analysis of a person's blood or breath.
(B) Legislative rules proposed by the Bureau for Public Health must specify the test or tests that are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community, and must provide an approved method of administration which must be followed in all such tests given under this section.

(C) The bureau shall review prescribed standards and methods at least every two years to ensure that the methods and standards are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community.

(2) A chemical analysis of blood to determine the alcohol content or the controlled substance or drug content of blood shall be conducted by a qualified laboratory or by the State Police scientific laboratory of the West Virginia State Police Forensic Laboratory.

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

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

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

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

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

§17C-5-9. Right to demand test.

Any person lawfully arrested for driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs shall have the right to demand that a sample or specimen of his or her blood or breath to determine the alcohol concentration of his or her blood be taken within two hours from and after the time of arrest and a sample or specimen of his or her blood or breath to determine the controlled substance or drug content of his or her blood, be taken within four hours from and after the time of arrest, and that a chemical test thereof be made. The analysis disclosed by such chemical test shall be made available to such arrested person forthwith upon demand.

§17C-5-12. Report to the Legislature.

On or before December 31, 2013, the Bureau for Public Health shall submit to the Joint Committee on Government and Finance a report that includes the following:

(1) Recommendations for the minimum levels of those drugs or controlled substances contained in subsection (d), section eight of this article, that must be present in a person's blood in order for the test to be admitted as prima facie evidence that the person was under the influence of a controlled substance or drug in a prosecution for the offense of driving a motor vehicle in this state; and

(2) Recommendations for the minimum levels of those drugs or controlled substances contained in subsection (d), section eight of this article, that laboratories approved to test blood for drug or controlled substance content can reliably identify and measure for the concentrations of drugs, controlled substances and their metabolites, in blood.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Chairman Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within was approved this the 1st day of May, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 29 2013

Time 2:10 pm