

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 608

(By Senators Browning, Kessler (Mr. President) and Klempa)

[Originating in the Committee on the Judiciary;
reported February 27, 2012.]

A BILL to amend and reenact §17C-5-4 of the Code of West Virginia, 1931, as amended, relating to driving under the influence of a controlled substance or substances or a combination of a controlled substance or alcohol; authorizing search warrant for blood draw; criteria for seeking a search warrant; and penalties.

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; 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
2 considered to have given his or her consent by the operation
3 of the motor vehicle to a preliminary breath analysis and a
4 secondary chemical test of either his or her blood, breath or
5 urine for the purposes of determining the alcoholic content
6 of his or her blood.

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

14 (c) A secondary test of blood, breath or urine is inciden-
15 tal to a lawful arrest and is to be administered at the direc-
16 tion of the arresting law-enforcement officer having reason-
17 able grounds to believe the person has committed an offense
18 prohibited by section two of this article or by an ordinance
19 of a municipality of this state which has the same elements
20 as an offense described in section two of this article.

21 (d) The law-enforcement agency that employs the law-
22 enforcement officer shall designate which type of secondary

23 test is to be administered: *Provided*, That if the test desig-
24 nated is a blood test and the person arrested refuses to
25 submit to the blood test, then the law-enforcement officer
26 making the arrest shall designate either a breath or urine
27 test to be administered. Notwithstanding the provisions of
28 section seven of this article, the refusal to submit to a blood
29 test only may not result in the revocation of the arrested
30 person's license to operate a motor vehicle in this state.

31 (e) Any person to whom a preliminary breath test is
32 administered who is then arrested shall be given a written
33 statement advising him or her that his or her refusal to
34 submit to the secondary chemical test pursuant to subsection
35 (d) of this section, will result in the revocation of his or her
36 license to operate a motor vehicle in this state for a period of
37 at least one year and up to life.

38 (f) Any law-enforcement officer who has been properly
39 trained in the administration of any secondary chemical test
40 authorized by this article, including, but not limited to,
41 certification by the Bureau for Public Health in the opera-
42 tion of any equipment required for the collection and
43 analysis of a breath sample, may conduct the test at any
44 location in the county wherein the arrest is made: *Provided*,

45 That the law-enforcement officer may conduct the test at the
46 nearest available properly functioning secondary chemical
47 testing device located outside the county in which the arrest
48 was made, if: (i) There is no properly functioning secondary
49 chemical testing device located within the county the arrest
50 was made; or (ii) there is no magistrate available within the
51 county the arrest was made for the arraignment of the person
52 arrested. A law-enforcement officer who is directing that a
53 secondary chemical test be conducted has the authority to
54 transport the person arrested to where the secondary
55 chemical testing device is located.

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

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

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

82 (j) A law-enforcement officer who has reasonable cause
83 to believe that person has committed an offense prohibited
84 by section eighteen, article seven, chapter twenty of this
85 code, relating to the operation of a motorboat, jet ski or other
86 motorized vessel, shall follow the provisions of this section
87 in administering, or causing to be administered, a prelimi-

88 nary breath analysis and the secondary chemical test of the
89 accused person's blood, breath or urine for the purpose of
90 determining alcohol content of his or her blood.

91 (k) Whenever a law-enforcement officer has probable
92 cause to believe that a person lawfully detained has commit-
93 ted a violation of section two of this article by operating a
94 motor vehicle while under the influence of a controlled
95 substance or substances or a combination of a controlled
96 substance or substances and alcohol, the officer may apply
97 for a search warrant to draw blood from the motor vehicle
98 operator if:

99 (1) the motor vehicle operator is exhibiting behaviors
100 consistent with being impaired to the point it prevents safe
101 operation of a motor vehicle;

102 (2) the person operating the motor vehicle has been
103 requested to consent to a blood test and has declined; and

104 (3) the taking of the sample is done within two hours of
105 the person's arrest or the acts alleged, whichever is later in
106 time.

107 When a person undergoes a blood test pursuant to this
108 subsection, only a physician, registered nurse, laboratory

109 technician, emergency medical technician - paramedic or
110 other qualified person to extract blood samples may with-
111 draw blood for the purpose of determining the drug or
112 alcoholic content therein. No physician, registered nurse or
113 other qualified person or employer thereof shall incur any
114 civil or criminal liability as a result of the medically proper
115 obtaining of such blood specimens pursuant to a search
116 warrant.