

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2380

2015 Carryover

(BY DELEGATES FOLK, IHLE, FAIRCLOTH, FRICH,
HOUSEHOLDER, SHOTT, KURCABA, WELD, SOBONYA AND
J. NELSON)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §17C-5-4 of the Code of West Virginia, 1931, as amended, relating
 2 to requiring the issuance of a search warrant before a driver of a motor vehicle can be
 3 made to submit to a secondary blood test to determine the concentration of alcohol or
 4 controlled substance in his or her blood.

Be it enacted by the Legislature of West Virginia:

1 That §17C-5-4 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

**§17C-5-4. Implied consent to test; search warrant; administration at direction of
 law-enforcement officer; designation of type of test; definition of law-enforcement
 officer.**

1 (a) The Legislature finds that:

2 (1) The Fourth Amendment to the United States Constitution requires law enforcement to
 3 have probable cause and a valid search warrant before searching an individual;

4 (2) In *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), the Supreme Court of the United
 5 States noted that a compelled test of an individual's blood is "an invasion of bodily integrity" that
 6 "implicates an individual's most personal and deep-rooted expectations of privacy."

7 (3) In *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), the Supreme Court of the United
 8 States held that in the absence of exigent circumstances, a compelled blood test without a search
 9 warrant violates an individual's Fourth Amendment right against unreasonable searches and
 10 seizures.

11 ~~(a)~~ (b) Any person who drives a motor vehicle in this state is considered to have given his
 12 or her consent by the operation of the motor vehicle to a preliminary breath analysis and a
 13 secondary chemical test of either his or her blood or breath and, upon issuance of a search

14 warrant, a secondary chemical test of the driver's blood to determine the alcohol concentration in
15 his or her blood, or the concentration in the person's body of a controlled substance, drug, or any
16 combination thereof.

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

22 ~~(e)~~ (d) A secondary test of blood or breath ~~is incidental to a lawful arrest and is to~~ may be
23 administered after a lawful arrest at the direction of the arresting law-enforcement officer having
24 a search warrant and probable cause to believe the person arrested has committed an offense
25 prohibited by section two of this article or by an ordinance of a municipality of this state which has
26 the same elements as an offense described in section two of this article.

27 (e) Notwithstanding any provision of this code, a warrant is required for any
28 nonconsensual test of a person's blood, and the dissipation of alcohol in a person's blood does
29 not constitute an exigent circumstance, justifying an exception to the warrant requirement for
30 nonconsensual blood testing in a criminal investigation.

31 ~~(d)~~ (f) The law-enforcement agency that employs the arresting law-enforcement officer
32 shall designate the secondary tests to be administered: ~~Notwithstanding the provisions of~~
33 section seven of this article, the refusal to submit to a blood test only may not result in the
34 revocation of the arrested person's license to operate a motor vehicle in this state.

35 ~~(e)~~ (g) Any person to whom a preliminary breath test is administered who is arrested shall
36 be given a written statement advising him or her that his or her refusal to submit to the secondary
37 chemical test pursuant to subsection (d) of this section will not result in the revocation of his or

38 her license to operate a motor vehicle in this state. ~~for a period of at least forty five days and up~~
39 ~~to life.~~

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

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

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

60 ~~(i)~~ (k) (1) For the purpose of this article, the term "law-enforcement officer" or "police
61 officer" means: (1) Any member of the West Virginia State Police; (2) any sheriff and any deputy

62 sheriff of any county; (3) any member of a police department in any municipality as defined in
63 section two, article one, chapter eight of this code; (4) any natural resources police officer of the
64 Division of Natural Resources; and (5) any special police officer appointed by the Governor
65 pursuant to the provisions of section forty-one, article three, chapter sixty-one of this code who
66 has completed the course of instruction at a law-enforcement training academy as provided for
67 under the provisions of section nine, article twenty-nine, chapter thirty of this code.

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

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

82 (4) That after December 31, 2014, a law-enforcement officer who has not satisfactorily
83 completed the minimum number of hours of training in the recognition of impairment in drivers
84 who are under the influence of controlled substances or drugs other than alcohol, required by
85 ~~subdivisions~~ subdivision (2) or (3) of this subsection, may no longer require any person to submit

86 to secondary chemical test of his or her blood for the purposes of determining the concentration
87 in the person's body of a controlled substance, drug, or any combination thereof.

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

NOTE: The purpose of this bill is to require a search warrant be issued before a driver of a motor vehicle can be made to submit to a secondary blood test to determine the concentration of alcohol or controlled substance in his or her blood.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.