

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2562**

BY DELEGATE KUMP, PUSHKIN, MCGEEHAN AND BROWN,

N.

[Introduced January 21, 2019; 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:*

**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) Any person who drives a motor vehicle in this state is considered to have given his or  
 2 her consent by the operation of the motor vehicle to a preliminary breath analysis ~~and a secondary~~  
 3 ~~chemical test of either his or her blood or breath~~ and, upon issuance of a search warrant, a  
 4 secondary chemical test of the driver's blood to determine the alcohol concentration in his or her  
 5 blood, or the concentration in the person's body of a controlled substance, drug, or any  
 6 combination thereof.

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

12 (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be  
 13 administered at the direction of the arresting law-enforcement officer having probable cause to  
 14 believe the person has committed an offense prohibited by section two of this article or by an  
 15 ordinance of a municipality of this state which has the same elements as an offense described in  
 16 section two of this article.

17 (d) The law-enforcement agency that employs the arresting law-enforcement officer shall

18 designate the secondary tests to be administered: Notwithstanding ~~the provisions of~~ section  
19 seven of this article, the refusal to submit to a blood test only may not result in the revocation of  
20 the arrested person's license to operate a motor vehicle in this state.

21 (e) Any person to whom a preliminary breath test is administered who is arrested shall be  
22 given a written statement advising him or her that his or her refusal to submit to the secondary  
23 chemical test pursuant to subsection (d) of this section will result in the revocation of his or her  
24 license to operate a motor vehicle in this state for a period of at least 45 days and up to life.

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

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

43 (h) Only the person actually administering or conducting a test conducted pursuant to this

44 article is competent to testify as to the results and the veracity of the test.

45       (+) (i) (1) For the purpose of this article, the term “law-enforcement officer” or “police officer”  
46 means: (1) Any member of the West Virginia State Police; (2) any sheriff and any deputy sheriff  
47 of any county; (3) any member of a police department in any municipality as defined in §8-1-2 of  
48 this code; (4) any natural resources police officer of the Division of Natural Resources; and (5)  
49 any special police officer appointed by the Governor pursuant to the provisions of §61-3-41 of this  
50 code who has completed the course of instruction at a law-enforcement training academy as  
51 provided for under the provisions of §30-29-9 of this code.

52       (2) In addition to standards promulgated by the Governor's Committee on Crime,  
53 Delinquency and Correction, pursuant to §30-29-3 of this code, governing the qualification of law-  
54 enforcement officers and the entry-level law-enforcement training curricula, the Governor's  
55 Committee on Crime, Delinquency and Correction shall require the satisfactory completion of a  
56 minimum of not less than six hours of training in the recognition of impairment in drivers who are  
57 under the influence of controlled substances or drugs other than alcohol.

58       (3) In addition to standards promulgated by the Governor's Committee on Crime,  
59 Delinquency and Correction, pursuant to §30-29-3 of this code, establishing standards governing  
60 in-service law-enforcement officer training curricula and in-service supervisory level training  
61 curricula, the Governor's Committee on Crime, Delinquency and Correction shall require the  
62 satisfactory completion of a minimum of not less than six hours of training in the recognition of  
63 impairment in drivers who are under the influence of controlled substances or drugs other than  
64 alcohol.

65       (4) That after December 31, 2014, a law-enforcement officer who has not satisfactorily  
66 completed the minimum number of hours of training in the recognition of impairment in drivers  
67 who are under the influence of controlled substances or drugs other than alcohol, required by  
68 ~~subdivisions~~ subdivision (2) or (3) of this subsection, may no longer require any person to submit  
69 to secondary chemical test of his or her blood for the purposes of determining the concentration

70 in the person's body of a controlled substance, drug, or any combination thereof.

71 (j) A law-enforcement officer who has reasonable cause to believe that person has  
72 committed an offense prohibited by §20-7-18 of this code, relating to the operation of a motorboat,  
73 jet ski or other motorized vessel, shall follow the provisions of this section in administering, or  
74 causing to be administered, a preliminary breath analysis and incidental to a lawful arrest, a  
75 secondary chemical test of the accused person's blood or breath to determine the alcohol  
76 concentration in his or her blood, or the concentration in the person's body of a controlled  
77 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 a heading or the present law and underscoring indicates new language that would be added.