

FILED

2010 APR -2 PM 4: 08

WEST VIRGINIA LEGISLATURE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2010

—●—
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 649

(SENATOR FOSTER, *original sponsor*)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 649

2010 APR -2 PM 4: 08

CRIMINAL JUSTICE DIVISION
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 649

(SENATOR FOSTER, *original sponsor*)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §62-1A-10 and §62-1A-11, all relating to search of motor vehicles by law enforcement officers with consent; providing for the development of a standardized form of a written consent to search a motor vehicle with the permission of the vehicle operator; requiring written or audio recording of a vehicle operator's permission or consent to search of motor vehicles by law-enforcement officers when appropriate; providing exceptions; addressing the effect of an officer's failure to document oral or written consent; providing for the establishment of appropriate, forms, standards and criteria by the Governor's Committee on Crime, Delinquency and Corrections; requiring legislative and emergency rules; and establishing effective date.

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 §62-1A-10 and §62-1A-11, all to read as follows:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-10. Motor vehicle searches.

1 (a) A law-enforcement officer who stops a motor vehicle
2 for an alleged violation of a traffic misdemeanor law or
3 ordinance may not search the vehicle unless he or she:

4 (1) Has probable cause or another lawful basis for the
5 search;

6 (2) Obtains the written consent of the operator of the
7 vehicle on a form that complies with section eleven of this
8 article; or, alternatively,

9 (3) Obtains the oral consent of the operator of the vehicle
10 and ensures that the oral consent is evidenced by an audio
11 recording that complies with section eleven of this article.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this section, should a form meeting the requirement of
14 section eleven of this article or an audio recording device
15 be unavailable a handwritten consent executed by the
16 vehicle operator and meeting the consent requirements of
17 section eleven of this article will suffice.

18 (c) Notwithstanding the provisions of subsection (a) or
19 (b) of this section should a court find that the officer had a
20 reasonable suspicion of dangerousness to his or her safety
21 which precluded recordation of the consent the
22 recordation requirements of this section shall be found
23 inapplicable.

24 (d) Failure to comply with the provisions of this section
25 shall not, standing alone, constitute proof that any consent
26 to search was involuntary.

27 (e) A finding by a court that the operator of a motor
28 vehicle voluntarily and verbally consented to a search of
29 the motor vehicle shall make the recordation requirements
30 of this section inapplicable.

31 (f) Nothing contained in this section shall be construed
32 to create a private cause of action.

33 (g) This section takes effect on January 1, 2011.

**§62-1A-11. Rules for certain evidence of consent to vehicle
search.**

1 (a) To facilitate the implementation of section ten of this
2 article the Governor's Committee on Crime, Delinquency
3 and Corrections shall promulgate emergency and legisla-
4 tive rules in accordance with article three, chapter twenty-
5 nine-a of this code to establish the requirements for:

6 (1) A form used to obtain the written consent of the
7 operator of a motor vehicle under section ten of this
8 article; and

9 (2) An audio recording used as evidence of the oral
10 consent of the operator of a motor vehicle under section
11 ten of this article.

12 (b) The form required under subsection (a) of this section
13 shall contain:

14 (1) A statement that the operator of the motor vehicle
15 fully understands that he or she may refuse to give the
16 law-enforcement officer consent to search the motor
17 vehicle;

18 (2) A statement that the operator of the motor vehicle is
19 freely and voluntarily giving the law-enforcement officer
20 consent to search the motor vehicle;

21 (3) A statement that the operator of the motor vehicle
22 may withdraw the consent at any time during the search;

23 (4) The time and date of the stop giving rise to the
24 search;

25 (5) The make and the registration number of the vehicle
26 to be searched; and

27 (6) The name of the law-enforcement officer seeking
28 consent.

29 (c) The rules adopted under subdivision (2), subsection
30 (a) of this section must require the audio recording to
31 reflect an affirmative statement made by the operator
32 that:

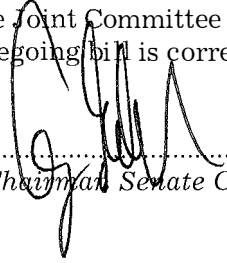
33 (1) The operator of the motor vehicle understands that
34 the operator may refuse to give the law-enforcement
35 officer consent to search the motor vehicle;

36 (2) The operator of the motor vehicle is voluntarily
37 giving the law-enforcement officer consent to search the
38 motor vehicle; and

39 (3) The operator of the motor vehicle was informed that
40 he or she may withdraw the consent at any time during the
41 search.

42 (d) The Governor's Committee on Crime, Delinquency
43 and Corrections shall promulgate the emergency and
44 legislative rules required by this section no later than
45 December 31, 2010.

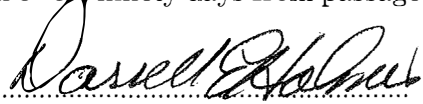
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

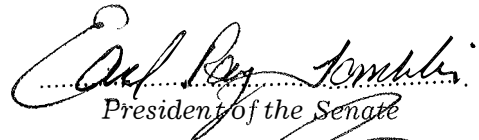

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this the *2nd*
Day of *April*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:30a