WEST VIRGINIA CODE: §17C-5-7

§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 Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.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 §17C-5-4 of this code, refuses to submit to a secondary chemical test, the test shall not be given.

(b) Upon requesting that a person submit to the secondary test, designated pursuant to §17C-5-4 of this code, the person shall be given the written and verbal warnings set forth in §17C-5-4(e) of this code. After the person under arrest is given the required written and verbal warnings, the person shall have the opportunity to submit to, or refuse to submit to, the secondary test. A refusal to submit to the secondary test is considered final after 15 minutes have passed since the refusal: *Provided,* That during the 15 minutes following the refusal, the arresting officers shall permit the person under arrest to revoke his or her refusal and shall provide the person with the opportunity to submit to the test upon request. After the 15 minutes have passed following a refusal to submit to the secondary test, the arresting officer has no further duty to provide the person with an opportunity to take the secondary test.

(c) The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner of the Division of Motor Vehicles and the court having jurisdiction over the charge filed against the person pursuant to §17C-5-2 of this code, a written statement 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 designated in the manner provided in §17C-5-4 of this code; and (4) the person was given the verbal warnings and the written statement required by subsection (b) of this section and §17C-5-4 of this code. An officer, by signing the statement required by this subsection, makes an oath or affirmation that the information contained in the statement is true and that any copy of the statement that he or she files is a true copy. The form for the written statement required by this section shall contain, upon its face, a warning to the officer signing that to willfully sign a statement containing false information is false swearing and is a misdemeanor.

(d) 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 §17C-5-4 of this code 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.

(e) The amendments made to this section during the 2020 regular session of the Legislature

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shall become effective on July 1, 2020.

WV Legislature