WEST VIRGINIA CODE: §17C-5-7A

§17C-5-7a. Suspension of license to operate a motor vehicle for refusal of secondary test; refusal review hearing.

(a) For the purposes of this section, the term "refusal review hearing" refers to a hearing to review a person's alleged refusal to submit to a secondary chemical test, as documented in a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code.

(b) Subject to the provisions of this subsection, the court shall enter an order finding that a person charged with a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test, as required by §17C-5-4 of this code.

(1) At the person's first appearance before the court, the court shall advise the person that his or her license to operate a motor vehicle shall be revoked for the applicable period provided in subsection (e) of this section, unless the person requests a refusal review hearing within 30 days following the first appearance.

(2) If the person does not request a refusal review hearing within 30 days following the first appearance, the court shall enter an order finding that the person charged with a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test.

(3) If the person requests a refusal review hearing within 30 days following the first appearance, the court shall conduct the review and enter the appropriate order, as provided in subsection (c) of this section.

(c) Refusal review hearing. —

(1) The court shall schedule and conduct a refusal review hearing if the person, named in a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code, requests the hearing within 30 days following his or her first appearance before the court. During the refusal review hearing, the court shall review the statement documenting the person's refusal to submit to the secondary chemical test, along with any testimony or evidence presented by the person or law-enforcement officer during the hearing.

(2) Pursuant to the provisions of §7-4-1 and §8-10-2 of this code, either the prosecuting attorney of the county with jurisdiction over the refusal review hearing or the legal representative of the municipality with jurisdiction over the refusal review hearing shall appear in and attend to all matters, actions, and proceedings of the refusal review hearing to protect the interests of the state.

(3) Based on the hearing, the court shall enter an order finding that the person did refuse to submit to a secondary chemical test if the court determines, by a preponderance of the

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evidence, that:

(A) The arresting law-enforcement officer had reasonable grounds to believe the arrested person had committed a violation of §17C-5-2 of this code;

(B) The law-enforcement officer requested the arrested person to submit to a chemical test designated pursuant to §17C-5-4 of this code;

(C) At the time the test was requested, the law-enforcement officer administered the required written and verbal warnings required by §17C-5-4 and §17C-5-7 of this code; and

(D) The arrested person refused to submit to a chemical test as requested by the law-enforcement officer.

(4) If the court determines, by a preponderance of the evidence, that one or more of the required conditions listed in subdivision (3) of this subsection did not occur, the court shall enter an order finding that the person did not refuse to submit to the secondary chemical test. If the court enters such an order, the Commissioner of the Division of Motor Vehicles may not revoke the person's license to operate a motor vehicle based on the alleged refusal to submit to a secondary chemical test.

(d) The clerk of the court in which the charges are pending shall immediately transmit any order entered pursuant to this section to the Commissioner of the Division of Motor Vehicles.

(e) Upon receipt of an order provided pursuant to this section finding that a person did refuse to submit to a secondary chemical test, the Commissioner of the Division of Motor Vehicles shall revoke the person's license to operate a motor vehicle as follows:

(1) For the first refusal to submit to the designated secondary chemical test, the commissioner shall enter an order revoking the person's license to operate a motor vehicle in this state for a period of one year or for a period of 45 days, with an additional one year of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of §17C-5A-3a of this code.

(2) If the person's license to operate a motor vehicle has previously been revoked under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, enter an order revoking the person's license to operate a motor vehicle in this state for a period of 10 years. The license may be reissued in five years in accordance with the provisions of §17C-5A-3 of this code.

(3) If the person's license to operate a motor vehicle has previously been revoked more than once under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, enter an order revoking the person's license to operate a motor vehicle in this state for a period of life.

(f) The commissioner shall forward a copy of each order entered pursuant to this section to

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the person by registered or certified mail, return receipt requested. An order shall contain the reasons for any revocation and shall specify the revocation period imposed.

(g) A revocation ordered pursuant to this section shall run concurrently with the period of any suspension or revocation imposed in accordance with §17C-5A-2 of this code.

(h) The provisions of this section do not confer upon the Division of Motor Vehicles the status of a party to any refusal review proceeding. Nothing in this section shall be construed as requiring either the prosecuting attorney of the county with jurisdiction over the refusal review hearing or the legal representative of the municipality with jurisdiction over the refusal review hearing to act as counsel for the commissioner or the Division of Motor Vehicles.

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