WEST VIRGINIA CODE: §17c-25-3

§17C-25-3. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

(a) Any person who operates an aircraft in this state is considered to have given his or her consent by the operation thereof to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath, or urine for the purposes of determining the alcoholic content of his or her blood, breath, or urine. A preliminary breath analysis may be administered in accordance with the provisions of §17C-25-4 of this code whenever a law-enforcement officer has reasonable cause to believe a person committed an offense prohibited by §17C-25-2 of this code. A secondary test of breath, blood, or urine shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer. The law-enforcement agency by which the law-enforcement officer is employed shall designate which one of the secondary tests shall be administered: *Provided*, That if the designated test is a blood test and the person arrested refuses to submit to the blood test, then the law-enforcement officer making the arrest shall designate in lieu thereof either a breath or urine test to be administered.

(b) If any political subdivision or the Division of Natural Resources does not have available to its law-enforcement officers the testing equipment or facilities necessary to conduct any secondary test which a law-enforcement officer may administer under this article, any member of the State Police, the sheriff of the county in which the arrest is made, or any deputy of the sheriff or any municipal law-enforcement officer of another municipality within the county in which the arrest is made may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct a secondary test. The results of the test may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer. Only the person actually administering or conducting the test is competent to testify as to the results and the veracity of the test.

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