

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972



ENROLLED

Committee Substitute

For

HOUSE BILL No. 709

(By Mr. *Farley* and Mr. *Albright*)



PASSED March 11 1972

In Effect 90 days from Passage



FILED IN THE OFFICE
JOHN D. ROSKOPPEL, JR.
SECRETARY OF STATE

THIS DATE 3-29-72

709

ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 709

(By MR. FARLEY and MR. ALBRIGHT)

(Originating in the House Committee on the Judiciary)

[Passed March 11, 1972; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the implied consent law generally and specifically to the implied consent to a chemical test to determine the alcoholic content of the blood of the operator of a motor vehicle arrested for driving a motor vehicle while under the influence of intoxicating liquor and the designation and administration of such a chemical test; and specifying the law-enforcement officers involved in the administration of such implied consent law.

Be it enacted by the Legislature of West Virginia:

That section one, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. IMPLIED CONSENT FOR CHEMICAL TEST FOR INTOXICATION.

§17C-5A-1. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle upon the public
2 streets or highways of this state shall be deemed to have
3 given his consent by the operation thereof, subject to the
4 provisions of this article, to a chemical test of either his
5 blood, breath or urine for the purpose of determining
6 the alcoholic content of his blood whenever he shall be
7 lawfully arrested by a law-enforcement officer as here-
8 inafter defined for the offense of driving a motor vehicle
9 upon the public streets or highways of this state while
10 under the influence of intoxicating liquor. The test shall
11 be incidental to a lawful arrest and shall be administered
12 at the direction of the arresting law-enforcement officer
13 having reasonable grounds to believe the person to have
14 been driving a motor vehicle upon the public streets or
15 highways while under the influence of intoxicating liquor.
16 The law-enforcement agency by which such law-enforce-
17 ment officer is employed shall designate which one of the
18 aforesaid tests shall be administered: *Provided*, That if
19 the test so designated is a blood test and the person so
20 arrested refuses to submit to such blood test, then the law-
21 enforcement officer making such arrest shall designate in
22 lieu thereof, either a breath or urine test be adminis-
23 tered, and notwithstanding the provisions of section three
24 of this article, such refusal to submit to a blood test only
25 shall not result in the suspension of the arrested person's
26 operator's or chauffeur's license, or junior or probationary
27 operator's license, or nonresident privilege to drive. The
28 person arrested shall be told that his refusal to submit to
29 the test finally designated as provided in this section, will
30 result in the suspension of his operator's or chauffeur's
31 license, or junior or probationary operator's license,
32 or nonresident privilege to drive for a period of six
33 months.

34 For the purposes of this article the term "law-enforce-
35 ment officer" shall mean and be limited to (1) any mem-

36 ber of the department of public safety of this state, (2)
37 any sheriff and any deputy sheriff of any county, and
38 (3) any member of a municipal police department in any
39 Class I, Class II or Class III city, as cities are classified
40 in section three, article one, chapter eight of this code. If
41 any Class I, Class II or Class III city does not have avail-
42 able to its law-enforcement officers the testing equipment
43 or facilities necessary to conduct any test which a law-
44 enforcement officer may administer under this article,
45 any member of the department of public safety, the
46 sheriff of the county wherein the arrest is made or any
47 deputy of such sheriff, may, upon the request of such
48 arresting law-enforcement officer and in his presence,
49 conduct such test and the results of such test may be
50 used in evidence to the same extent and in the same
51 manner as if such test had been conducted by such arrest-
52 ing law-enforcement officer. Only the person actually ad-
53 ministering or conducting such test shall be competent to
54 testify as to the results and the veracity of such test.

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

Russell H. Beall
Chairman Senate Committee

Thyllis J. Rutledge
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Larson
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

E. H. McCourt
President of the Senate

Louis N. M. Mann
Speaker House of Delegates

The within approved this the 27th
day of March, 1972.

Arch A. Shaffer, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/20/72

Time 10:17a.m.

MAR 29 9 28 AM '72

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA