WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
Committee Substitute
for
HOUSE BILL No. 709

(By Mr. [Signature])

PASSED March 11, 1972

In Effect 90 days from Passage

FILED IN THE OFFICE
JOHN D. ROONEY
SECRETARY OF STATE
THIS DATE 3-29-72
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.

Any person who drives a motor vehicle upon the public streets or highways of this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a chemical test of either his blood, breath or urine for the purpose of determining the alcoholic content of his blood whenever he shall be lawfully arrested by a law-enforcement officer as hereinafter defined for the offense of driving a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor. The test shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public streets or highways while under the influence of intoxicating liquor. The law-enforcement agency by which such law-enforcement officer is employed shall designate which one of the aforesaid tests shall be administered: Provided, That if the test so designated is a blood test and the person so arrested refuses to submit to such blood test, then the law-enforcement officer making such arrest shall designate in lieu thereof, either a breath or urine test be administered, and notwithstanding the provisions of section three of this article, such refusal to submit to a blood test only shall not result in the suspension of the arrested person's operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive. The person arrested shall be told that his refusal to submit to the test finally designated as provided in this section, will result in the suspension of his operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive for a period of six months.

For the purposes of this article the term "law-enforcement officer" shall mean and be limited to (1) any mem-
member of the department of public safety of this state, (2) any sheriff and any deputy sheriff of any county, and (3) any member of a municipal police department in any Class I, Class II or Class III city, as cities are classified in section three, article one, chapter eight of this code. If any Class I, Class II or Class III city does not have available to its law-enforcement officers the testing equipment or facilities necessary to conduct any test which a law-enforcement officer may administer under this article, any member of the department of public safety, the sheriff of the county wherein the arrest is made or any deputy of such sheriff, may, upon the request of such arresting law-enforcement officer and in his presence, conduct such test and the results of such test may be used in evidence to the same extent and in the same manner as if such test had been conducted by such arresting law-enforcement officer. Only the person actually administering or conducting such test shall be competent to 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 B. Beall  
Chairman Senate Committee

Thaddeus J. Kutch  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard K. Tanner  
Clerk of the Senate

E. Blakenship  
Clerk of the House of Delegates

E. H. McCourt  
President of the Senate

Larry G. M. Mann  
Speaker House of Delegates

The within ________________ this the 27th day of ________, 1972.

Arthur W. Harvey  
Governor