

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 704

(By Mr. Sawilla and Mr. Polen)



PASSED February 15 1974

In Effect July 1, 1974 Passage



SECRETARY OF STATE
THIS DATE 2-22-74

704

ENROLLED

H. B. 704

(By MR. SAVILLA and MR. POLEN)

[Passed February 15, 1974; in effect July 1, 1974.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to blood test for alcohol in any driver and adult pedestrian who dies in or within four hours after having been involved in a motor vehicle accident; relating to those responsible for reporting death and functions of county medical examiner; establishing a time limit for conducting test; relating to persons who may conduct test; granting consent to withdraw blood from dead body; granting civil and criminal immunity to person withdrawing blood and conducting test; relating to fee for test and to whom and how county medical examiners report results of blood tests; making such reports not admissible as evidence; relating to use of reports; and specifying that reports may be used only for statistical and highway safety purposes.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-b, to read as follows:

**ARTICLE 5B. POST-MORTEM TESTS FOR ALCOHOL IN PERSONS
KILLED IN MOTOR VEHICLE ACCIDENTS.**

**§17C-5B-1. Blood tests for alcohol in drivers and adult pedestrians
killed in motor vehicle accidents; time limit for
conducting test; who may conduct test; express con-
sent to withdraw blood from dead body granted;
granting civil and criminal immunity to person con-
ducting test; fee for test.**

1 When any motor vehicle driver or adult pedestrian dies
2 in a motor vehicle accident in this state or dies within
3 four hours after having been involved in a motor vehicle
4 accident in this state, the physician in attendance, or law
5 enforcement officer having knowledge of such death, or the
6 funeral director, or any other person present when such
7 death occurred shall immediately report such death to the
8 medical examiner of the county in which such death occurred.
9 Upon receipt of such notice, the medical examiner shall take
10 charge of the dead body and shall conduct, or shall cause to
11 be conducted, within twelve hours after receiving such notice
12 and before the dead body is embalmed, a blood test to
13 determine the presence and percentage concentration of alcohol
14 in the blood of such dead body.

15 The blood test required under this section shall be con-
16 ducted only by a person qualified to conduct an autopsy
17 under article twelve, chapter sixty-one of this code, or by
18 a doctor of medicine, doctor of osteopathy, registered nurse,
19 trained medical technician at the place of his employment,
20 or county coroner who is deemed qualified by the com-
21 mission on post-mortem examinations to conduct such blood
22 test.

23 Any person who is to conduct a blood test under the
24 provisions of this section is hereby expressly authorized to
25 withdraw blood from the dead body in the quantity necessary
26 to conduct such blood test. Any person withdrawing blood
27 from the dead body and testing such blood and any hos-
28 pital or clinic in which such blood is withdrawn and tested
29 under the provisions of this section shall be immune from all
30 civil and criminal liability which might otherwise be imposed.

31 Any person conducting a blood test under the provisions
32 of this section shall receive a standardized fee in the amount
33 determined by the commission on post-mortem examinations,
34 which fee shall be paid from funds appropriated to the com-
35 mission on post-mortem examinations.

36 Nothing contained in this section shall be construed to
37 preclude the taking of a blood test by any other person having
38 the right to take such test or cause such test to be taken
39 while the medical examiner has charge of the body.

**§17C-5B-2. To whom and how county medical examiners report
results of blood tests; such reports not admissible as
evidence; use of reports only for statistical and high-
way safety purposes.**

1 Each county medical examiner shall immediately report the
2 results of each blood test conducted under the authority of
3 section one of this article by him, or conducted at his request,
4 to the chief medical examiner of the office of medical exami-
5 nations and to the department of public safety. The results of
6 such blood test and report thereof shall be used only for
7 record-keeping and statistical purposes. No results of such
8 blood test or any report thereof shall be admissible in evi-
9 dence in any action or proceeding of any kind in any court or
10 before any tribunal, board, agency or person.

11 The department of public safety shall compile the data from
12 all such reports submitted to it on a monthly basis. The de-
13 partment shall forward such compilations to the governor's
14 highway safety administration and the department of motor
15 vehicles. Such compilations shall be only for statistical pur-
16 poses and highway safety information and shall not disclose
17 or reveal in any manner the identity of any dead person whose
18 blood was tested under the provisions of section one of this
19 article.

20 The department of public safety, the governor's highway
21 safety administration and department of motor vehicles shall
22 make use of such compilations in a manner to provide accurate
23 and useful statistical information to government and the public
24 relative to achieving a reduction in motor vehicle accidents
25 arising in whole or in part from the imbibing of alcohol by
26 motor vehicle drivers and adult pedestrians.

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

H. Derral Darby
Chairman Senate Committee

Lawrence C. Christman
Chairman House Committee

Originated in the House.

Takes effect July 1, 1974.

Howard Johnson
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Brotherton, Jr.
President of the Senate

Lewis D. Mann
Speaker House of Delegates

The within approved this the 22nd
day of February, 1974.

Archie A. Moore, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 2/18/74

Time 4:35 p.m.