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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

Com. Sub. for
HOUSE BILL No. 2389

(By ~~the~~ *Del. Metheny & Murensky*)



Passed April 5, 1989

In Effect Ninety Days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2389
(By DELEGATES METHENEY AND MURENSKY)

[Passed April 5, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the definition of law-enforcement officers for purposes of serious traffic offenses to include conservation officers of the department of natural resources; and authorizing such officers to request the testing of blood, breath or urine to be conducted by other authorized law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

That section four, article five, 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 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. 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 in this state
2 shall be deemed to have given his consent by the
3 operation thereof, subject to the provisions of this

4 article, to a preliminary breath analysis and a secondary
5 chemical test of either his blood, breath or urine for the
6 purposes of determining the alcoholic content of his
7 blood. A preliminary breath analysis may be adminis-
8 tered in accordance with the provisions of section five
9 of this article whenever a law-enforcement officer has
10 reasonable cause to believe a person to have committed
11 an offense prohibited by section two of this article or by
12 an ordinance of a municipality of this state which has
13 the same elements as an offense described in said section
14 two of this article. A secondary test of blood, breath or
15 urine shall be incidental to a lawful arrest and shall be
16 administered at the direction of the arresting law-
17 enforcement officer having reasonable grounds to
18 believe the person to have committed an offense
19 prohibited by section two of this article or by an
20 ordinance of a municipality of this state which has the
21 same elements as an offense described in said section
22 two of this article. The law-enforcement agency by
23 which such law-enforcement officer is employed shall
24 designate which one of the aforesaid secondary tests
25 shall be administered: *Provided*, That if the test so
26 designated is a blood test and the person so arrested
27 refuses to submit to such blood test, then the law-
28 enforcement officer making such arrest shall designate
29 in lieu thereof, either a breath or urine test to be
30 administered, and notwithstanding the provisions of
31 section seven of this article, such refusal to submit to
32 a blood test only shall not result in the revocation of the
33 arrested person's license to operate a motor vehicle in
34 this state. Any person to whom a preliminary breath test
35 is administered who is then arrested shall be given a
36 written statement advising him that his refusal to
37 submit to the secondary chemical test finally designated
38 as provided in this section, will result in the revocation
39 of his license to operate a motor vehicle in this state for
40 a period of at least one year and up to life.

41 For the purpose of this article the term "law-
42 enforcement officer" or "police officer" shall mean and
43 be limited to (1) any member of the department of
44 public safety of this state, (2) any sheriff and any deputy
45 sheriff of any county, (3) any member of a police

46 department in any municipality as defined in section
47 two, article one, chapter eight of this code, and (4) any
48 conservation officer of the department of natural
49 resources. If any municipality or the department of
50 natural resources does not have available to its law-
51 enforcement officers the testing equipment or facilities
52 necessary to conduct any secondary test which a law-
53 enforcement officer may administer under this article,
54 any member of the department of public safety, the
55 sheriff of the county wherein the arrest is made or any
56 deputy of such sheriff or any municipal law-enforcement
57 officer of another municipality within the county
58 wherein the arrest is made may, upon the request of
59 such arresting law-enforcement officer and in his
60 presence, conduct such secondary test and the results of
61 such test may be used in evidence to the same extent
62 and in the same manner as if such test had been
63 conducted by such arresting law-enforcement officer.
64 Only the person actually administering or conducting
65 such test shall be competent to testify as to the results
66 and the veracity of such test.

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Joel C. Miller
Clerk of the Senate

Donald J. Hoyle
Clerk of the House of Delegates

Langston
President of the Senate

Bob Child
Speaker of the House of Delegates

The within *is approved* this the *26th*
day of *April*, 1989.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNMENT

Date 4/14/89

Time 5:09