WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2389

(By Del. Metheny & Munensky)

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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
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article, to a preliminary breath analysis and a secondary
cellular test of either his blood, breath or urine for the
purposes of determining the alcoholic content of his
blood. A preliminary breath analysis may be adminis-
tered in accordance with the provisions of section five
of this article whenever a law-enforcement officer has
reasonable cause to believe a person to have committed
an offense prohibited by section two of this article or by
an ordinance of a municipality of this state which has the
same elements as an offense described in said section
two of this article. A secondary test of blood, breath or
urine 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 committed an offense
prohibited by section two of this article or by an
ordinance of a municipality of this state which has the
same elements as an offense described in said section
two of this article. The law-enforcement agency by
which such law-enforcement officer is employed shall
designate which one of the aforesaid secondary 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 to be
administered, and notwithstanding the provisions of
section seven of this article, such refusal to submit to
a blood test only shall not result in the revocation of the
arrested person’s license to operate a motor vehicle in
this state. Any person to whom a preliminary breath test
is administered who is then arrested shall be given a
written statement advising him that his refusal to
submit to the secondary chemical test finally designated
as provided in this section, will result in the revocation
of his license to operate a motor vehicle in this state for
a period of at least one year and up to life.

For the purpose of this article the term “law-
enforcement officer” or “police officer” shall mean and
be limited to (1) any member of the department of
public safety of this state, (2) any sheriff and any deputy
sheriff of any county, (3) any member of a police
department in any municipality as defined in section two, article one, chapter eight of this code, and (4) any conservation officer of the department of natural resources. If any municipality or the department 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 department of public safety, the sheriff of the county wherein the arrest is made or any deputy of such sheriff or any municipal law-enforcement officer of another municipality within the county wherein the arrest is made may, upon the request of such arresting law-enforcement officer and in his presence, conduct such secondary 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.

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Jose D. Vilela
Clerk of the Senate

Donald L. Young
Clerk of the House of Delegates

L. A. T.,
President of the Senate

E. B. McCullough
Speaker of the House of Delegates

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

Gaston Caperton
Governor