WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 649
(SENATOR FOSTER, original sponsor)

[Passed March 13, 2010; in effect ninety days from passage.]
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §62-1A-10 and §62-1A-11, all relating to search of motor vehicles by law enforcement officers with consent; providing for the development of a standardized form of a written consent to search a motor vehicle with the permission of the vehicle operator; requiring written or audio recording of a vehicle operator's permission or consent to search of motor vehicles by law-enforcement officers when appropriate; providing exceptions; addressing the effect of an officer's failure to document oral or written consent; providing for the establishment of appropriate, forms, standards and criteria by the Governor's Committee on Crime, Delinquency and Corrections; requiring legislative and emergency rules; and establishing effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §62-1A-10 and §62-1A-11, all to read as follows:
ARTICLE 1A. SEARCH AND SEIZURE.


(a) A law-enforcement officer who stops a motor vehicle for an alleged violation of a traffic misdemeanor law or ordinance may not search the vehicle unless he or she:

(1) Has probable cause or another lawful basis for the search;

(2) Obtains the written consent of the operator of the vehicle on a form that complies with section eleven of this article; or, alternatively,

(3) Obtains the oral consent of the operator of the vehicle and ensures that the oral consent is evidenced by an audio recording that complies with section eleven of this article.

(b) Notwithstanding the provisions of subsection (a) of this section, should a form meeting the requirement of section eleven of this article or an audio recording device be unavailable a handwritten consent executed by the vehicle operator and meeting the consent requirements of section eleven of this article will suffice.

(c) Notwithstanding the provisions of subsection (a) or (b) of this section should a court find that the officer had a reasonable suspicion of dangerousness to his or her safety which precluded recordation of the consent the recordation requirements of this section shall be found inapplicable.

(d) Failure to comply with the provisions of this section shall not, standing alone, constitute proof that any consent to search was involuntary.

(e) A finding by a court that the operator of a motor vehicle voluntarily and verbally consented to a search of the motor vehicle shall make the recordation requirements of this section inapplicable.
(f) Nothing contained in this section shall be construed to create a private cause of action.

(g) This section takes effect on January 1, 2011.


To facilitate the implementation of section ten of this article the Governor's Committee on Crime, Delinquency and Corrections shall promulgate emergency and legislative rules in accordance with article three, chapter twenty-nine-a of this code to establish the requirements for:

(1) A form used to obtain the written consent of the operator of a motor vehicle under section ten of this article; and

(2) An audio recording used as evidence of the oral consent of the operator of a motor vehicle under section ten of this article.

(b) The form required under subsection (a) of this section shall contain:

(1) A statement that the operator of the motor vehicle fully understands that he or she may refuse to give the law-enforcement officer consent to search the motor vehicle;

(2) A statement that the operator of the motor vehicle is freely and voluntarily giving the law-enforcement officer consent to search the motor vehicle;

(3) A statement that the operator of the motor vehicle may withdraw the consent at any time during the search;

(4) The time and date of the stop giving rise to the search;
(5) The make and the registration number of the vehicle to be searched; and

(6) The name of the law-enforcement officer seeking consent.

(c) The rules adopted under subdivision (2), subsection (a) of this section must require the audio recording to reflect an affirmative statement made by the operator that:

(1) The operator of the motor vehicle understands that the operator may refuse to give the law-enforcement officer consent to search the motor vehicle;

(2) The operator of the motor vehicle is voluntarily giving the law-enforcement officer consent to search the motor vehicle; and

(3) The operator of the motor vehicle was informed that he or she may withdraw the consent at any time during the search.

(d) The Governor's Committee on Crime, Delinquency and Corrections shall promulgate the emergency and legislative rules required by this section no later than December 31, 2010.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st Day of ........................................... 2010.

Governor