

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3101

BY DELEGATES NESTOR, D. JENNINGS, HORST, STORCH,

PRITT, KIMES, BRUCE, HANNA, CONLEY, FORSHT AND

MALLOW

[Introduced March 12, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §62-1A-10 of the Code of West Virginia, as amended, relating to
 2 preserving the constitutional right of West Virginians to be free from unlawful automotive
 3 searches.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-10. Motor vehicle searches.

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

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

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

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

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

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

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

18 (e) A finding by a court that the operator of a motor vehicle voluntarily and verbally
 19 consented to a search of the motor vehicle shall make the recordation requirements of this section
 20 inapplicable.

- 21 (f) Nothing contained in this section shall be construed to create a private cause of action.
- 22 ~~(g) This section takes effect on January 1, 2011.~~

NOTE: The purpose of this bill is to clarify when an automotive search is lawful in this state.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.