

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **ENGROSSED**

## **House Bill 5039**

By Delegate Linville

(By Request of the Division of Motor Vehicles)

[Introduced January 23, 2024; Referred to the  
Committee on Technology and Infrastructure  
then the Judiciary]



1 A BILL to amend and reenact §17C-5-7 and §17C-5-7a of the Code of West Virginia, 1931, as  
2 amended, relating to authorizing the West Virginia Division of Motor Vehicles to enforce  
3 administrative penalties for the civil offense of refusing a secondary chemical test.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not  
withdrawn if person arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest, as specified in §17C-5-4 of this code, refuses to submit to a  
2 secondary chemical test, the test shall not be given.

3 (b) Upon requesting that a person submit to the secondary test, designated pursuant to  
4 §17C-5-4 of this code, the person shall be given the written and verbal warnings set forth in  
5 §17C-5-4(e) of this code. After the person under arrest is given the required written and verbal  
6 warnings, the person shall have the opportunity to submit to, or refuse to submit to, the secondary  
7 test. A refusal to submit to the secondary test is considered final after 15 minutes have passed  
8 since the refusal: *Provided*, That during the 15 minutes following the refusal, the arresting officers  
9 shall permit the person under arrest to revoke his or her refusal and shall provide the person with  
10 the opportunity to submit to the test upon request. After the 15 minutes have passed following a  
11 refusal to submit to the secondary test, the arresting officer has no further duty to provide the  
12 person with an opportunity to take the secondary test.

13 (c) The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner of  
14 the Division of Motor Vehicles and the court having jurisdiction over the charge filed against the  
15 person pursuant to §17C-5-2 of this code, a written statement that: ~~(1) He or she had probable  
16 cause to believe the person had been driving a motor vehicle in this state while under the influence  
17 of alcohol, controlled substances, or drugs; (2) the person was lawfully placed under arrest for an  
18 offense relating to driving a motor vehicle in this state while under the influence of alcohol,  
19 controlled substances, or drugs; (3) the a person under arrest or in custody for a violation of §17C-~~

20 5-2 of this code refused to submit to the secondary chemical test designated in the manner  
21 provided in §17C-5-4 of this code; and (4) (2) the person was given the verbal warnings and the  
22 written statement required by subsection (b) of this section and §17C-5-4 of this code. An officer,  
23 by signing the statement required by this subsection, makes an oath or affirmation that the  
24 information contained in the statement is true and that any copy of the statement that he or she  
25 files is a true copy. The form for the written statement required by this section shall contain, upon  
26 its face, a warning to the officer signing that to willfully sign a statement containing false  
27 information is false swearing and is a misdemeanor.

28 (d) Any person who is unconscious or who is otherwise in a condition rendering him or her  
29 incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his or  
30 her blood or breath as provided in §17C-5-4 of this code and the test may be administered  
31 although the person is not informed that his or her failure to submit to the test will result in the  
32 revocation of his or her license to operate a motor vehicle in this state for the period provided for in  
33 this section.

34 (e) The amendments made to this section during the ~~2020~~ 2024 regular session of the  
35 Legislature shall become effective on July 1, ~~2020~~ 2024.

**§17C-5-7a. Suspension of license to operate a motor vehicle for refusal of secondary test;  
refusal review hearing.**

1 (a) For the purposes of this section, the term "refusal review hearing" refers to a hearing  
2 to review a person's alleged refusal to submit to a secondary chemical test, as documented in a  
3 statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code.

4 (b) Effective July 1, ~~2020~~ 2024, the court shall enter an order finding that a person charged  
5 with a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test, as  
6 required by §17C-5-4 of this code, subject to the following:

7 (1) At the person's first pre-trial conference or initial preliminary hearing the Court shall  
8 conduct a refusal review hearing. ~~appearance before the court, the court shall advise the person~~

9 ~~that his or her license to operate a motor vehicle shall be revoked for the applicable period~~  
10 ~~provided in subsection (e) of this section, unless the person requests a refusal review hearing~~  
11 ~~within the 30 days following the first appearance;~~

12 ~~(2) If the person does not request a refusal review hearing within 30 days following the first~~  
13 ~~appearance the court shall enter an order finding that a person charged with a violation of §17C-5-~~  
14 ~~2 of this code did refuse to submit to a secondary chemical test; and~~

15 ~~(3) If the person requests a refusal review hearing within 30 days following the first~~  
16 ~~appearance, the court shall conduct the review and enter the appropriate order, as provided in~~  
17 ~~subsection (c) of this section.~~

18 ~~(c) Refusal review hearing. —~~

19 ~~(1) The court shall schedule and conduct a refusal review hearing if the person, named in a~~  
20 ~~statement submitted to the court by a law enforcement officer pursuant to §17C-5-7, requests the~~  
21 ~~hearing within 30 days following his or her first appearance before the court. During the refusal~~  
22 ~~review hearing, the court shall review the statement documenting the person's refusal to submit to~~  
23 ~~the secondary chemical test, along with any testimony or evidence presented by the person or~~  
24 ~~law enforcement officer during the hearing.~~

25 ~~(2) Based on the hearing, the court shall enter an order finding that the person did refuse to~~  
26 ~~submit to a secondary chemical test, if the court determines, by a preponderance of the evidence,~~  
27 ~~that:~~

28 ~~(A) The arresting law-enforcement officer had reasonable grounds to believe the arrested~~  
29 ~~person had committed a violation of §17C-5-2 of this code;~~

30 ~~(B) The law-enforcement officer requested the arrested person to submit to the chemical~~  
31 ~~test or tests designated pursuant to §17C-5-4 of this code;~~

32 ~~(C) At the time the test was requested, the law-enforcement officer administered the~~  
33 ~~required written and verbal warnings required by §17C-5-4 and §17C-5-7 of this code; and~~

34 (D) The arrested person refused to submit to the chemical test or tests requested by the  
35 law-enforcement officer.

36 ~~(3)~~ (2) If the court determines, by a preponderance of the evidence, that one or more of the  
37 required conditions listed in subdivision ~~(2)~~ (1) of this subsection did not occur, the court shall enter  
38 an order finding that the person did not refuse to submit to the secondary chemical test. If the court  
39 enters such an order, the Commissioner of the Division of Motor Vehicles may not revoke the  
40 person's license to operate a motor vehicle based on the alleged refusal to submit to a secondary  
41 chemical test.

42 (d) The clerk of the court in which the charges are pending shall immediately transmit any  
43 order entered pursuant to this section to the Commissioner of the Division of Motor Vehicles.

44 (e) Upon receipt of an order provided pursuant to this section finding that a person did  
45 refuse to submit to a secondary chemical test, The Commissioner of the Division of Motor Vehicles  
46 shall revoke the person's license to operate a motor vehicle as follows:

47 (1) For the first refusal to submit to the designated secondary chemical test, the  
48 commissioner shall enter an order revoking the person's license to operate a motor vehicle in this  
49 state for a period of one year or for a period of 45 days, with an additional one year of participation  
50 in the Motor Vehicle Alcohol and Drug Test and Lock Program in accordance with the provisions of  
51 §17C-5A-3a of this code.

52 (2) If the person's license to operate a motor vehicle has previously been revoked under  
53 the provisions of this section, the commissioner shall, for the refusal to submit to the designated  
54 secondary chemical test, enter an order revoking the person's license to operate a motor vehicle in  
55 this state for a period of 10 years: *Provided*, That the license may be reissued in five years in  
56 accordance with the provisions of §17C-5A-3 of this code.

57 (3) If the person's license to operate a motor vehicle has previously been revoked more  
58 than once under the provisions of this section, the commissioner shall, for the refusal to submit to

59 the designated secondary chemical test, enter an order revoking the person's license to operate a  
60 motor vehicle in this state for a period of life.

61 (f) A copy of each order entered pursuant to this section shall be forwarded to the person  
62 by registered or certified mail, return receipt requested, and shall contain the reasons for any  
63 revocation and shall specify the revocation period imposed pursuant to this section.

64 (g) A revocation ordered pursuant to this section shall run concurrently with the period of  
65 any suspension or revocation imposed in accordance with §17C-5A-2 of this code.