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HOUSE BILL NO. 1171

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 13, 2000)

(Patrons Prior to Substitute—Delegates Bryant, Almand [1313] and Armstrong [524])

A *BILL to amend and reenact § 18.2-268.5 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-268.2.1, relating to blood samples taken by emergency room personnel.*

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-268.5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-268.2.1 as follows:

§ 18.2-268.2.1. Blood samples taken by emergency room personnel.

A. If the driver of any motor vehicle involved in an accident, where there is evidence of alcohol use by the driver, is transported to the emergency room of a hospital or similar facility for treatment and has taken a blood test to measure, among other things, blood-alcohol content, the emergency room physician or his designee shall, upon request of the investigating law-enforcement officer, inform the officer of the driver's blood-alcohol concentration as indicated by such test and any other evidence that the driver is under the influence of alcohol. If the officer has probable cause from the information available to him sufficient to make an arrest he may, with concurrence of the treating physician, obtain from the treating physician or his designee another blood sample taken in the officer's presence and in accordance with the provisions of § 18.2-268.5. This sample shall be given to the officer for transmission as set forth in §§ 18.2-268.6 and 18.2-268.7.

B. No person directed by an officer to withdraw blood pursuant to subsection A shall be subject to civil liability for the act of withdrawing blood from the driver, provided the blood was withdrawn according to recognized medical procedures. However, the person shall not be relieved from liability for negligence in the withdrawing of any blood sample. In addition, no person shall be subject to civil liability for reporting test results to an officer as required by subsection A.

C. For purposes of this section, (i) the two-hour limitation set forth in subsection A of § 18.2-268.2 shall not apply and (ii) notwithstanding the provisions of §§ 18.2-268.2 and 18.2-267, the presumptions of § 18.2-269 shall be applicable in any prosecution for a violation of § 18.2-266, or of a substantially similar ordinance.

§ 18.2-268.5. Qualifications and liability of persons authorized to take blood sample; procedure for taking samples.

For purposes of this article, only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug or both alcohol and drug content. It is a Class 3 misdemeanor to reuse single-use-only needles or syringes. No civil liability shall attach to any person authorized to withdraw blood as a result of the act of withdrawing blood as provided in this section from (i) any person submitting thereto or (ii) any person involved in a motor vehicle accident involving serious physical injury or death who is unable to or refuses to submit to the withdrawal of his blood, provided the blood was withdrawn according to recognized medical procedures. However, the person shall not be relieved from liability for negligence in the withdrawing of any blood sample. *Immunity from civil liability, other than negligence, pursuant to clause (ii) shall attach only to persons withdrawing blood at the request of a law-enforcement officer.*

No person arrested for a violation of § 18.2-266 or § 18.2-266.1, or a similar ordinance shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for in this section.

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