

005026716

HOUSE BILL NO. 300

Offered January 12, 2000

A BILL to amend and reenact §§ 18.2-266, 18.2-268.10, 18.2-269, 46.2-341.24, 46.2-341.26:10 and 46.2-341.27 of the Code of Virginia, relating to presumption of intoxication in DUI cases.

Patron—Deeds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-266, 18.2-268.10, 18.2-269, 46.2-341.24, 46.2-341.26:10 and 46.2-341.27 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated, etc.

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this article, (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any other self-administered ~~intoxicant or intoxicating drug or drugs~~ of whatsoever nature, or any combination of such drugs, ~~to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely,~~ or (iv) while such person is under the combined influence of alcohol and any ~~narcotic drug or drugs or any other self-administered intoxicating drug or drugs of whatsoever nature~~ to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely. A charge alleging a violation of this section shall support a conviction under clauses (i), (ii), (iii) or (iv).

For the purposes of this section, the term "motor vehicle" includes mopeds, while operated on the public highways of this Commonwealth.

§ 18.2-268.10. Evidence of violation of § 18.2-266 or § 18.2-266.1.

In any trial for a violation of § 18.2-266 or § 18.2-266.1 or a similar ordinance, the admission of the blood or breath test results shall not limit the introduction of any other relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of any blood or breath tests, consider other relevant admissible evidence of the condition of the accused. ~~If the test results indicate the presence of any drug other than alcohol, the test results shall be admissible only if other competent evidence has been presented to relate the presence of the drug or drugs to the impairment of the accused's ability to drive or operate any motor vehicle, engine or train safely.~~

The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal.

The court or jury trying the case involving a violation of clause (ii), (iii) or (iv) of § 18.2-266 or § 18.2-266.1 shall determine the innocence or guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

§ 18.2-269. Presumptions from alcohol content of blood.

A. In any prosecution for a violation of § 18.2-36.1 or § 18.2-266 (ii), or any similar ordinance, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcohol content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood or 0.05 grams or less per 210 liters of the accused's breath, it shall be presumed that the accused was not under the influence of alcohol intoxicants at the time of the alleged offense;

(2) If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.05 grams but less than 0.08 grams per 210 liters of the accused's breath, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcohol intoxicants at the time of the alleged offense, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused; or

(3) If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused was under the influence of alcohol intoxicants at the time of the alleged offense.

B. *In any prosecution for a violation of § 18.2-36.1 or § 18.2-266 (iii) or (iv), or any similar*

INTRODUCED

HB300

ordinance, the presence of any amount of any narcotic drug or drugs or any other self-administered intoxicating drug or drugs of whatsoever nature in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood to determine the drug content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the rebuttable presumption that the accused was under the influence of the drug or drugs.

C. The provisions of this section shall not apply to and shall not affect any prosecution for a violation of § 46.2-341.24.

§ 46.2-341.24. Driving a commercial motor vehicle while intoxicated, etc.

A. It shall be unlawful for any person to drive or operate any commercial motor vehicle (i) while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams per 210 liters of breath as indicated by a chemical test administered as provided in this article; (ii) while such person is under the influence of alcohol; (iii) while such person is under the influence of any narcotic drug or drugs or any other self-administered intoxicant or intoxicating drug or drugs of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any commercial motor vehicle safely; or (iv) while such person is under the combined influence of alcohol and any narcotic or any other self-administered intoxicating drug or drugs of whatsoever nature to a degree which impairs his ability to drive or operate any commercial motor vehicle safely.

B. It shall be unlawful and a lesser included offense of an offense under provision clause (i), (ii), or (iv) of subsection A of this section for a person to drive or operate a commercial motor vehicle while such person has a blood alcohol concentration of 0.04 percent or more by weight by volume or 0.04 grams or more per 210 liters of breath as indicated by a chemical test administered in accordance with the provisions of this article.

§ 46.2-341.26:10. Evidence.

A. In any trial for a violation of § 46.2-341.24, admission of the blood or breath test results shall not limit the introduction of any other relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the results of the blood or breath tests, consider other relevant admissible evidence of the condition of the accused. If the test results indicate the presence of any drugs other than alcohol, the test results shall be admissible only if other competent evidence has been presented to relate the presence of the drug or drugs to the impairment of the accused's ability to drive or operate any commercial motor vehicle safely.

The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood is not evidence and shall not be subject to any comment by the Commonwealth at the trial of the case, except in rebuttal; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal.

B. The court or jury trying the case involving a violation of clause (ii), (iii) or (iv) of subsection A of § 46.2-341.24 shall determine the innocence or guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

§ 46.2-341.27. Presumptions from alcoholic content of blood.

In any prosecution for a violation of provision clause (ii) of subsection A of § 46.2-341.24, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the suspect's blood or breath to determine the alcoholic content of his blood in accordance with the provisions of §§ 46.2-341.26:1 through 46.2-341.26:11 shall give rise to the following rebuttable presumption: if there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused was under the influence of alcoholic intoxicants.

If there was at that time less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, such fact shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such fact may be considered with other competent evidence in determining the guilt or innocence of the accused.

In any prosecution for a violation of clause (iii) or (iv) of subsection A of § 46.2-341.24, the presence of any amount of any narcotic drug or drugs or any other self-administered intoxicating drug or drugs of whatsoever nature in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood to determine the drug content of his blood in accordance with the provisions of §§ 46.2-341.26:1 through 46.2-341.26:11 shall give rise to the rebuttable presumption that the accused was under the influence of the drug or drugs.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 in FY 2010.