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SENATE BILL NO. 365

Offered January 20, 2000

A BILL to amend and reenact §§ 18.2-268.10 and 46.2-341.26:10 of the Code of Virginia, relating to driving while intoxicated.

Patrons—Trumbo, Howell, Lucas, Mims, Puller, Quayle, Reynolds, Saslaw and Williams; Delegates: Cantor, Harris, Howell, McQuigg and Weatherholtz

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

§ 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.

§ 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 § 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.

INTRODUCED

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