

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 561

An Act to amend and reenact §§ 18.2-268.6 and 18.2-268.8 of the Code of Virginia, relating to DUI blood lab work.

[H 2673]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.6 and 18.2-268.8 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-268.6. Transmission of blood samples.

Adequate portions of the blood samples withdrawn pursuant to § 18.2-268.5 shall be placed in vials provided by the Division of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vial shall complete the prenumbered certificate of blood withdrawal form attached to the vial by the Division. The completed withdrawal certificate for each vial shall show the name of the accused, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer. The officer shall initial the completed certificate. The vials shall be divided between two containers provided by the Division, and the containers shall be sealed to prevent tampering with the vial. The arresting or accompanying officer shall take possession of the two containers as soon as the vials are placed in such containers and sealed, and shall promptly transport or mail one of the containers to the Division. Immediately after taking possession of the second container, the officer shall give to the accused a form provided by the Division which sets forth the procedure to obtain an independent analysis of the blood in the second container, and a list of the names and addresses of laboratories approved by the Division. The form shall contain a space for the accused or his counsel to direct the officer possessing the second container to forward it to an approved laboratory for analysis, if desired. If the accused directs the officer in writing on the form to forward the second container to an approved laboratory of the accused's choice, the officer shall do so.

If the accused does not direct otherwise on the form, the officer having the second container shall deliver it to the chief police officer. The chief police officer, upon receiving the container, shall retain it for a period of seventy-two hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief police officer to mail the second container to the laboratory the accused has chosen from the approved list.

The contents of the second container shall be transmitted, tested and admitted in evidence in the same manner and in accordance with procedures established for the sample sent to the Division; however, an analysis of the second blood sample to determine the presence of a drug or drugs shall not be performed unless an analysis of the first blood sample by the Division has indicated the presence of such drug or drugs.

If the chief police officer having possession of the second container is not directed as herein provided to mail it within seventy-two hours after receiving the container, he shall destroy it.

§ 18.2-268.8. Fees.

Payment for withdrawing blood shall not exceed twenty-five dollars, which shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for a violation of § 18.2-266 or § 18.2-266.1 or of a similar ordinance, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

Approved laboratories determining the alcohol content of the second blood sample shall be allowed a fee of ~~no more than twenty-five dollars, which not to exceed the amount established on the Division's fee schedule~~ and shall be paid out of the appropriation for criminal charges. Payment for determining the presence of a drug or drugs in the second sample may not exceed the amount established on the Division's fee schedule and shall be paid out of the appropriation for criminal charges.

If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266 or § 18.2-266.1 or a similar ordinance, (i) the fee paid by the Commonwealth to the laboratory for testing the second blood sample and (ii) a fee of twenty-five dollars for testing the first blood sample by the Division shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.