

030352783

HOUSE BILL NO. 1399

Offered January 8, 2003

Prefiled September 24, 2002

A BILL to amend and reenact §§ 18.2-268.6 and 18.2-268.7 of the Code of Virginia, relating to blood samples taken from DUI accuseds.

Patrons—Janis, Albo and Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.6 and 18.2-268.7 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Adequate portions of the blood samples *The blood sample* withdrawn pursuant to § 18.2-268.5 shall be placed in ~~vials~~ *a vial* provided by the Division of Forensic Science. The ~~vials~~ *vial* 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~~ *the* 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~~ *vial shall be placed in a container* provided by the Division, and the ~~containers~~ *container* shall be sealed to prevent tampering with the vial. The arresting or accompanying officer shall take possession of the ~~two containers~~ *container* as soon as the ~~vials~~ *vial* is placed in ~~such containers~~ *the container* and sealed, and shall promptly transport or mail ~~one of the containers~~ *the container* 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.

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.

§ 18.2-268.7. Transmission of blood test results; use as evidence.

Upon receipt of a blood sample forwarded to the Division for analysis pursuant to § 18.2-268.6, the Division shall have it examined for its alcohol or drug or both alcohol and drug content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided by the Division and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug or both alcohol and drug content. The Director shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. The vial and blood sample shall be destroyed after completion of the analysis. A similar certificate of analysis, with the withdrawal certificate from the independent laboratory which analyzes the second blood sample on behalf of the accused, shall be returned to the clerk of the court in which the charge will be heard. The blood sample shall be destroyed after completion of the analysis by the independent laboratory.

When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through 18.2-268.6 is forwarded for analysis to the Division, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal

INTRODUCED

HB1399

59 certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal or
60 civil proceeding, as evidence of the facts therein stated and of the results of such analysis. ~~On motion of~~
61 ~~the accused, the certificate prepared for the second sample shall be admissible in evidence when attested~~
62 ~~by the pathologist or by the supervisor of the approved laboratory.~~

63 Upon request of the person whose blood was analyzed, the test results shall be made available to
64 him.

65 The Director may delegate or assign these duties to an employee of the Division of Forensic Science.