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## HOUSE BILL NO. 1217

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact § 18.2-267 of the Code of Virginia, relating to the admissibility of preliminary analysis of breath to determine alcoholic content of blood.*

Patron—Landes

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-267 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-267. Preliminary analysis of breath to determine alcoholic content of blood.

A. Any person who is suspected of a violation of § 18.2-266 or § 18.2-266.1 shall be entitled, if such equipment is available, to have his breath analyzed to determine the probable alcoholic content of his blood. The person shall also be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of Criminal Justice Services, Division of Forensic Science, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of a violation of § 18.2-266 or § 18.2-266.1, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under § 18.2-266 or § 18.2-266.1.

D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the officer may charge the person with a violation of § 18.2-266 or § 18.2-266.1, or a similar ordinance of the county, city or town where the arrest is made. The person so charged shall then be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance of a county, city or town.

E. The results of the breath analysis shall not be admitted into evidence in any prosecution under § 18.2-266 or § 18.2-266.1; the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of § 18.2-266 or § 18.2-266.1 except (i) when the person refuses to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood pursuant to § 18.2-268.3, (ii) in rebuttal to testimony offered regarding a difference in the defendant's blood alcohol content occurring in the period of time between operation of the vehicle and administration of a blood or breath test pursuant to § 18.2-268.2, or (iii) when an expert witness offers testimony in rebuttal. The results of the preliminary breath analysis shall be admissible into evidence in any prosecution under subsection B of § 29.1-738 or § 29.1-738.02. The trier of fact may consider such results as evidence of intoxication; however, the presumptions set forth in § 18.2-269 shall not apply to results admitted into evidence pursuant to this section.

F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of § 18.2-266 or § 18.2-266.1, advise the person of his rights under the provisions of this section.

G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through 18.2-268.12.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

INTRODUCED

HB1217