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HOUSE BILL NO. 1872

Offered January 12, 2005

Prefiled January 7, 2005

A BILL to amend and reenact § 18.2-268.3 of the Code of Virginia, relating to refusal of blood or breath alcohol tests; procedures.

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-268.3 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-268.3. Refusal of tests; procedures.

A. When a person is arrested for a violation of §§ 18.2-51.4, 18.2-266, 18.2-266.1 or § 18.2-272 or of a similar ordinance, the arresting officer shall advise the person, from a form described in subsection B, that (i) a person who operates a motor vehicle upon a public highway in the Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood and breath taken for chemical tests to determine the alcohol or drug content of his blood, (ii) a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, (iii) that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of the Commonwealth, (iv) the criminal penalty for unreasonable refusal within 10 years of a prior conviction for driving while intoxicated or unreasonable refusal is a Class 2 misdemeanor, and (v) the criminal penalty for unreasonable refusal within 10 years of any two prior convictions for driving while intoxicated or unreasonable refusal is a Class 1 misdemeanor; ~~refuses to permit blood or breath or both blood and breath samples to be taken for such tests.~~

B.— The form from which the arresting officer shall advise the person arrested shall be provided by the Office of the Executive Secretary of the Supreme Court and shall contain a brief statement of the law requiring the taking of blood or breath samples, that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, ~~and the penalties for refusal, a declaration of refusal, and space for the arresting officer to indicate whether the defendant has consented or refused to provide a sample of his blood or breath,~~ an acknowledgement of the arresting officer that he has read the form to the defendant, and a line for the signature of the arresting officer. The form shall be signed by the arresting officer and, ~~if the defendant has refused,~~ the arresting officer shall acknowledge before the magistrate that the form was read to the person arrested ~~and that the person arrested refused to provide samples of his blood or breath. The magistrate or arresting officer shall also certify, if applicable, that the refusal came within 10 years of any prior conviction for unreasonable refusal or driving while intoxicated, so that the punishment upon conviction would be a Class 2 misdemeanor, or that the refusal came within 10 years of any two prior convictions for unreasonable refusal or driving while intoxicated so that the punishment upon conviction would be a Class 1 misdemeanor.~~ The magistrate shall promptly issue a warrant or summons charging the person with ~~a violation of subsection A~~ *unreasonable refusal and, if applicable, with having refused within 10 years of a prior conviction or convictions for unreasonable refusal or driving while intoxicated,* and shall attach the executed advisement form to the warrant or summons. The magistrate or arresting officer, as the case may be, shall forward the executed advisement and warrant or summons to the appropriate court. The warrant or summons for a first offense under this section shall be executed in the same manner as criminal warrants or summonses. If the person has been taken to a medical facility for treatment or evaluation of his medical condition, the arresting officer at a medical facility may issue, on the premises of the medical facility, a summons for a violation of subsection A in lieu of securing a warrant.

C. Unreasonable refusal to allow a blood or breath sample to be taken to determine the alcohol or drug content of the defendant's blood is a violation of this section and shall be an offense punishable as set forth in ~~§§ 18.2-268.3 and~~ § 18.2-268.4. Venue for the trial of the warrant or summons shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants is to be tried.

INTRODUCED

HB1872