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SENATE BILL NO. 471

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 18.2-269, 29.1-738.3 and 46.2-341.27 of the Code of Virginia, relating to alcohol or drug content of blood; permissive inferences.

Patrons—Norment, Howell and Stolle; Delegate: Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-269, 29.1-738.3 and 46.2-341.27 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-269. Permissive inferences from alcohol or drug content of blood.

A. In any prosecution for a violation of § 18.2-36.1 or clause (ii), (iii) or (iv) of § 18.2-266, or any similar ordinance, the amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the following ~~rebuttable presumptions~~ *inferences*:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood or 0.05 grams or less per 210 liters of the accused's breath, it ~~shall be presumed~~ *may be inferred* that the accused was not under the influence of alcohol intoxicants at the time of the alleged offense;

(2) If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.05 grams but less than 0.08 grams per 210 liters of the accused's breath, such facts shall not give rise to any ~~presumption~~ *inference* that the accused was or was not under the influence of alcohol intoxicants at the time of the alleged offense, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused;

(3) If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it ~~shall be presumed~~ *may be inferred* that the accused was under the influence of alcohol intoxicants at the time of the alleged offense; or

(4) If there was at that time an amount of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood, it ~~shall be presumed~~ *may be inferred* that the accused was under the influence of drugs at the time of the alleged offense to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely.

B. The provisions of this section shall not apply to and shall not affect any prosecution for a violation of § 46.2-341.24.

§ 29.1-738.3. Permissive inferences from alcohol or drug content.

In any prosecution for operating a watercraft or motorboat which is underway in violation of clause (ii), (iii) or (iv) of subsection B of § 29.1-738, or of a similar ordinance of any county, city or town, the amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of § 29.1-738.2 shall give rise to the ~~rebuttable presumptions~~ *inferences* of subdivisions (1) through (4) of subsection A of § 18.2-269.

§ 46.2-341.27. Permissive inferences from alcohol and drug content of blood.

In any prosecution for a violation of provision (ii), (iii) or (iv) of subsection A of § 46.2-341.24, the amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the suspect's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of §§ 46.2-341.26:1 through 46.2-341.26:11 shall give rise to the following ~~rebuttable presumptions~~ *inferences*:

A. If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it ~~shall be presumed~~ *may be inferred* that the accused was under the influence of alcoholic intoxicants.

B. If there was at that time less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, such fact shall not give rise to any ~~presumption~~ *inference* that the accused was or was not under the influence of alcoholic intoxicants, but such fact may be considered with other competent evidence in determining the guilt or innocence of the accused.

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59 C. If there was at that time an amount of the following substances at a level that is equal to or
60 greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine
61 per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of
62 3,4-methylenedioxymethamphetamine per liter of blood, it ~~shall be presumed~~ *may be inferred* that the
63 accused was under the influence of drugs to a degree which impairs his ability to drive or operate any
64 commercial motor vehicle safely.