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HOUSE BILL NO. 550

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact §§ 18.2-268.2 and 18.2-268.3 of the Code of Virginia, relating to applicability of the implied consent law.

Patrons—Griffith, Athey, Cole, Cosgrove, Gilbert, Lingamfelter, Massie, Merricks and Sherwood

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.2 and 18.2-268.3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-268.2. Implied consent to post-arrest testing to determine drug or alcohol content of blood.

A. Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a highway, as defined in § 46.2-100, in the Commonwealth shall be deemed thereby, as a condition of such operation, to have consented 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, if he is arrested for violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance within three hours of the alleged offense.

B. Any person so arrested for a violation of clause (i) or (ii) of § 18.2-266 or both, § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance shall submit to a breath test. If the breath test is unavailable or the person is physically unable to submit to the breath test, a blood test shall be given. The accused shall, prior to administration of the test, be advised by the person administering the test that he has the right to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If the equipment automatically produces a written printout of the breath test result, the printout, or a copy, shall be given to the accused. *The provisions of this section shall apply notwithstanding the inability of the person so arrested to comprehend, because of his state of inebriation or inability to understand the English language, the advisement of the person administering the test.*

C. A person, after having been arrested for a violation of clause (iii), (iv), or (v) of § 18.2-266 or § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance, may be required to submit to a blood test to determine the drug or both drug and alcohol content of his blood. When a person, after having been arrested for a violation of § 18.2-266 (i) or (ii) or both, submits to a breath test in accordance with subsection B or refuses to take or is incapable of taking such a breath test, he may be required to submit to tests to determine the drug or both drug and alcohol content of his blood if the law-enforcement officer has reasonable cause to believe the person was driving under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

§ 18.2-268.3. Refusal of tests; penalties; procedures.

A. It shall be unlawful for a person who is arrested for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance to unreasonably refuse to have samples of his blood or breath or both blood and breath taken for chemical tests to determine the alcohol or drug content of his blood as required by § 18.2-268.2 and any person who so unreasonably refuses is guilty of a violation of this section.

B. When a person is arrested for a violation of § 18.2-51.4, 18.2-266, 18.2-266.1 or, subsection B of § 18.2-272 or of a similar ordinance and such person refuses to permit blood or breath or both blood and breath samples to be taken for testing as required by § 18.2-268.2, the arresting officer shall advise the person, from a form provided by the Office of the Executive Secretary of the Supreme Court, that (i) a person who operates a motor vehicle upon a 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) 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. The form from which the arresting officer shall advise the person arrested shall contain a brief statement of the law requiring the taking of blood or breath samples, a statement that a finding of unreasonable refusal to consent may be admitted as

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HB550

59 evidence at a criminal trial, and the penalties for refusal. *The provisions of this section shall apply*
60 *notwithstanding the inability of the person so arrested to comprehend, because of his state of inebriation*
61 *or inability to understand the English language, the advisement of the arresting officer.*

62 C. The arresting officer shall, under oath before the magistrate, execute the form and certify, (i) that
63 the defendant has refused to permit blood or breath or both blood and breath samples to be taken for
64 testing; (ii) that the officer has read the portion of the form described in subsection B to the arrested
65 person; (iii) that the arrested person, after having had the portion of the form described in subsection B
66 read to him, has refused to permit such sample or samples to be taken; and (iv) how many, if any,
67 violations of this section, § 18.2-266, or any offense described in subsection E of § 18.2-270 the arrested
68 person has been convicted of within the last 10 years. Such sworn certification shall constitute probable
69 cause for the magistrate to issue a warrant or summons charging the person with unreasonable refusal.
70 The magistrate shall attach the executed and sworn advisement form to the warrant or summons. The
71 warrant or summons for a first offense under this section shall be executed in the same manner as a
72 criminal warrant or summons. If the person arrested has been taken to a medical facility for treatment or
73 evaluation of his medical condition, the arresting officer may read the advisement form to the person at
74 the medical facility, and issue, on the premises of the medical facility, a summons for a violation of this
75 section in lieu of securing a warrant or summons from the magistrate. The magistrate or arresting
76 officer, as the case may be, shall forward the executed advisement form and warrant or summons to the
77 appropriate court.

78 D. A first violation of this section is a civil offense and subsequent violations are criminal offenses.
79 For a first offense the court shall suspend the defendant's privilege to drive for a period of one year.
80 This suspension period is in addition to the suspension period provided under § 46.2-391.2.

81 If a person is found to have violated this section and within 10 years prior to the date of the refusal
82 he was found guilty of any of the following: a violation of this section, a violation of § 18.2-266, or a
83 violation of any offense listed in subsection E of § 18.2-270, arising out of separate occurrences or
84 incidents, he is guilty of a Class 2 misdemeanor and the court shall suspend the defendant's privilege to
85 drive for a period of three years. This suspension period is in addition to the suspension period provided
86 under § 46.2-391.2.

87 If a person is found guilty of a violation of this section and within 10 years prior to the date of the
88 refusal he was found guilty of any two of the following: a violation of this section, a violation of
89 § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270 arising out of separate
90 occurrences or incidents, he is guilty of a Class 1 misdemeanor and the court shall suspend the
91 defendant's privilege to drive for a period of three years. This suspension period is in addition to the
92 suspension period provided under § 46.2-391.2.