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HOUSE BILL NO. 924

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 18.2-268.2 of the Code of Virginia, relating to implied consent to post-arrest testing to determine drug or alcohol content of blood.

Patron—Bell, Robert B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-268.2 of the Code of Virginia is 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. *For purposes of this subsection, a person is under arrest when he is (i) in a medical facility receiving treatment or evaluation for injuries following a motor vehicle accident and (ii) in the presence of a law-enforcement officer who exercises authority over the person and is capable of exercising physical dominion over the person.*

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.

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.

INTRODUCED

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