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HOUSE BILL NO. 924

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 10, 2010)

(Patron Prior to Substitute—Delegate Bell, R.B.)

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.*

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 (i) 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 or (ii) *if a law-enforcement officer has probable cause to place him under arrest, within three hours of the alleged offense, for violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance and such person is in a hospital or other medical facility awaiting or receiving evaluation or treatment for injuries following a motor vehicle accident.*

B. Any person (i) 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 or (ii) for whom probable cause for arrest exists pursuant to clause (ii) of subsection A 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, *he shall submit to a blood test shall be given.* The accused shall, prior to administration of the *breath* 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~~ (i) who has 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 or (ii) for whom probable cause exists for arrest pursuant to clause (ii) of subsection A 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.

D. As used in §§ 18.2-268.3 through 18.2-268.12:

The term "arrest" shall also include the instance when a law-enforcement officer has probable cause to place a person under arrest pursuant to the provisions of clause (ii) of subsection A.

HOUSE SUBSTITUTE

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