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HOUSE BILL NO. 924

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 3, 2010)

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

A *BILL to amend and reenact §§ 18.2-268.2 and 19.2-73 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 and 19.2-73 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 *or charged by summons in lieu of a warrant pursuant to § 19.2-73* 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 *or charged by summons* 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~~ *who has been arrested or charged by summons* 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 *or charged by summons* 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 for a violation of § 18.2-266, 18.2-266.2, subsection B of 18.2-272 or similar ordinance and has charged that person by a summons issued in lieu of a warrant pursuant to § 19.2-73.*

§ 19.2-73. Issuance of summons instead of warrant in certain cases.

A. In any misdemeanor case or in any class of misdemeanor cases, or in any case involving complaints made by any state or local governmental official or employee having responsibility for the enforcement of any statute, ordinance or administrative regulation, the magistrate or other issuing authority having jurisdiction may issue a summons instead of a warrant when there is reason to believe that the person charged will appear in the courts having jurisdiction over the trial of the offense charged.

B. If any person under suspicion for driving while intoxicated has been taken to a medical facility for treatment or evaluation of his medical condition, ~~the arresting an~~ officer at the medical facility may issue, on the premises of the medical facility, a summons for a violation of § 18.2-266, 18.2-266.1, 18.2-272 or 46.2-341.24 and for refusal of tests in violation of subsection A of § 18.2-268.3 or subsection A of § 46.2-341.26:3, in lieu of securing a warrant *and without having to detain that person, provided that the officer has probable cause to place him under arrest.*

C. Any person on whom such summons is served shall appear on the date set forth in same, and if such person fails to appear in such court at such time and on such date then he shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.