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HOUSE BILL NO. 518**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice
on February 19, 2014)

(Patron Prior to Substitute—Delegate Morris)

*A BILL to amend and reenact §§ 18.2-268.7, 19.2-187, and 46.2-341.26:7 of the Code of Virginia, relating to certificates of analysis admitted into evidence.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-268.7, 19.2-187, and 46.2-341.26:7 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-268.7. Transmission of blood test samples; use as evidence.**

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 18.2-268.6, the Department shall have it examined for its alcohol or drug or both alcohol and drug content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug or both alcohol and drug content. The Director shall remove the withdrawal certificate from the vial, *and either (i) attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached or (ii) electronically scan it into the Department's Laboratory Information Management System and place the original withdrawal certificate in its case-specific file.* The certificate of analysis ~~with~~ and the withdrawal certificate shall be returned *or electronically transmitted* to the clerk of the court in which the charge will be heard.

B. After completion of the analysis, the Department shall preserve the remainder of the blood until *at least* 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

C. When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through 18.2-268.6 is forwarded for analysis to the Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court as evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding, provided the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

Upon request of the person whose blood was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the Department.

§ 19.2-187. Admission into evidence of certain certificates of analysis.

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.), a certificate of analysis of a person performing an analysis or examination, duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the proceeding if the attorney for the Commonwealth intends to offer it into evidence in a preliminary hearing or the accused intends to offer it into evidence in any hearing or trial, or (ii) the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, when any such analysis or examination is performed in any laboratory operated by the Division of Consolidated Laboratory Services or the Department of Forensic Science or

60 authorized by such Department to conduct such analysis or examination, or performed by a person
61 licensed by the Department of Forensic Science pursuant to § 18.2-268.9 or 46.2-341.26:9 to conduct
62 such analysis or examination, or performed by the Federal Bureau of Investigation, the federal Postal
63 Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal
64 Investigative Service, the National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement
65 Administration, the Forensic Document Laboratory of the U.S. Department of Homeland Security, or the
66 U.S. Secret Service Laboratory.

67 In a hearing or trial in which the provisions of subsection A of § 19.2-187.1 do not apply, a copy of
68 such certificate shall be mailed or delivered by the clerk or attorney for the Commonwealth to counsel
69 of record for the accused at no charge at least seven days prior to the hearing or trial upon request made
70 by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. The
71 request to the clerk shall be on a form prescribed by the Supreme Court and filed with the clerk at least
72 10 days prior to the hearing or trial. In the event that a request for a copy of a certificate is filed with
73 the clerk with respect to a case that is not yet before the court, the clerk shall advise the requester that
74 he must resubmit the request at such time as the case is properly before the court in order for such
75 request to be effective. If, upon proper request made by counsel of record for the accused, a copy of
76 such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to counsel of
77 record for the accused in a timely manner in accordance with this section, the accused shall be entitled
78 to continue the hearing or trial.

79 The certificate of analysis of any examination conducted by the Department of Forensic Science
80 relating to a controlled substance, marijuana, or synthetic cannabinoids as defined in § 18.2-248.1:1 shall
81 be mailed or forwarded by personnel of the Department of Forensic Science to the attorney for the
82 Commonwealth of the jurisdiction where such offense may be heard. The attorney for the
83 Commonwealth shall acknowledge receipt of the certificate on forms provided by the laboratory.

84 Any such certificate of analysis purporting to be signed, *either by hand or by electronic means*, by
85 any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or
86 signature or of the official character of the person whose name is signed to it. *The attestation signature*
87 *of a person performing the analysis or examination may be either hand or electronically signed.*

88 For the purposes of this section and §§ 19.2-187.01, 19.2-187.1, and 19.2-187.2, the term "certificate
89 of analysis" includes reports of analysis and results of laboratory examination.

90 **§ 46.2-341.26:7. Transmission of samples.**

91 A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to
92 § 46.2-341.26:6, the Department shall have it examined for its alcohol or drug content, and the Director
93 shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom
94 the blood sample was received and examined; a statement that the seal on the vial had not been broken
95 or otherwise tampered with; a statement that the container and vial were provided or approved by the
96 Department and that the vial was one to which the completed withdrawal certificate was attached; and a
97 statement of the sample's alcohol or drug content. The Director or his representative shall remove the
98 withdrawal certificate from the vial, *and either (i) attach it to the certificate of analysis and state in the*
99 *certificate of analysis that it was so removed and attached or (ii) electronically scan it into the*
100 *Department's Laboratory Information Management System and place the original withdrawal certificate*
101 *in its case-specific file.* The certificate of analysis ~~with~~ *and* the withdrawal certificate shall be returned
102 *or electronically transmitted* to the clerk of the court in which the charge will be heard. After
103 completion of the analysis, the Department shall preserve the remainder of the blood until *at least* 90
104 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by
105 motion filed before the court in which the charge will be heard, with notice to the Department, request
106 an order directing the Department to transmit the remainder of the blood sample to an independent
107 laboratory retained by the accused for analysis. The Department shall destroy the remainder of the blood
108 sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day
109 period.

110 B. When a blood sample taken in accordance with the provisions of §§ 46.2-341.26:2 through
111 46.2-341.26:6 is forwarded for analysis to the Department, a report of the test results shall be filed in
112 that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with
113 the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court as
114 evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding,
115 provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has
116 not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any
117 civil proceeding. On motion of the accused, the report of analysis prepared for the remaining blood
118 sample shall be admissible in evidence provided the report is duly attested by a person performing such
119 analysis and the independent laboratory that performed the analysis is accredited or certified to conduct
120 forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime
121 Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists

122 (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health
123 Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).
124 Upon request of the person whose blood or breath was analyzed, the test results shall be made
125 available to him.
126 The Director may delegate or assign these duties to an employee of the Department.