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## HOUSE BILL NO. 2221

Offered January 15, 2015

A BILL to amend and reenact §§ 18.2-267, 29.1-738.1, and 46.2-341.25 of the Code of Virginia, relating to DUI; preliminary analysis of saliva.

Patron—Davis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-267, 29.1-738.1, and 46.2-341.25 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-267. Preliminary analysis of breath or saliva to determine alcohol content of or presence of intoxicants or drugs in blood.

A. Any person who is suspected of a violation of § 18.2-266, 18.2-266.1, subsection B of § 18.2-272, or a similar ordinance shall be entitled, if such equipment is available, to have his breath *or saliva* analyzed to determine the probable alcoholic content of *or the presence of any intoxicant or drug in his blood*. The person shall also be entitled, upon request, to observe the process of analysis and to see the ~~blood-alcohol~~ reading on the equipment used to perform the breath *or saliva* test. His breath *or saliva* may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of Forensic Science shall determine the proper method and equipment to be used in analyzing breath *or saliva* samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of an offense listed in subsection A, shall have the right to refuse to permit his breath *or saliva* to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution for an offense listed in subsection A.

D. Whenever the breath *or saliva* sample analysis indicates that alcohol ~~is~~, *intoxicants, or drugs* present in the person's blood, the officer may charge the person with a violation of an offense listed in subsection A. The person so charged shall then be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance.

E. The results of the breath *or saliva* analysis shall not be admitted into evidence in any prosecution for an offense listed in subsection A, the purpose of this section being to permit a preliminary analysis of the alcoholic content of *or the presence of any intoxicant or drug in* the blood of a person suspected of having committed an offense listed in subsection A.

F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having committed an offense listed in subsection A, advise the person of his rights under the provisions of this section.

G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through 18.2-268.12.

§ 29.1-738.1. Analysis of breath or saliva to determine alcohol content of or presence of intoxicants or drugs in blood.

Any person who is suspected of a violation of subsection B of § 29.1-738 or § 29.1-738.02 shall be entitled, if such equipment is available, to have a preliminary breath *or saliva* analysis for the purpose of obtaining an analysis of the probable alcohol content of *or the presence of any intoxicant or drug in* his blood. The procedures and requirements of § 18.2-267 shall apply, *mutatis mutandis*.

§ 46.2-341.25. Preliminary analysis of breath or saliva of commercial drivers to determine alcohol content of or presence of intoxicants or drugs in blood.

A. Any person who is reasonably suspected of a violation of § 46.2-341.24 or of having any alcohol, *intoxicants, or drugs* in his blood while driving or operating a commercial motor vehicle may be required by any law-enforcement officer to provide a sample of such person's breath *or saliva* for a preliminary screening to determine the probable alcohol content of *or the presence of any intoxicant or drug in* his blood. Such person shall be entitled, upon request, to observe the process of analysis and to see the ~~blood-alcohol~~ reading on the equipment used to perform the breath *or saliva* test. Such breath *or saliva* may be analyzed by any police officer of the Commonwealth, or of any county, city, or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of Forensic Science shall determine the proper method and equipment to be used

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59 in analyzing breath *or saliva* samples taken pursuant to this section and shall advise the respective  
60 police and sheriff's departments of the same.

61 C. If the breath *or saliva* sample analysis indicates that there is alcohol, *intoxicants, or drugs* present  
62 in the person's blood, or if the person refuses to provide a sample of his breath *or saliva* for a  
63 preliminary screening, such person shall then be subject to the provisions of §§ 46.2-341.26:1 through  
64 46.2-341.26:11.

65 D. The results of a breath *or saliva* analysis conducted pursuant to this section shall not be admitted  
66 into evidence in any prosecution under § 46.2-341.24 or 46.2-341.31, but may be used as a basis for  
67 charging a person for a violation of the provisions of § 46.2-341.24 or 46.2-341.31.

68 E. The law-enforcement officer requiring the preliminary screening test shall advise the person of his  
69 obligations under this section and of the provisions of subsection C of this section.