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SENATE BILL NO. 336

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding a section numbered 18.2-268.13, relating to hospital laboratory blood tests; use to establish rebuttable presumption in DUI cases.

Patrons—Waddell; Delegates: May and Mims

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-268.13 as follows:

§ 18.2-268.13. Hospital laboratory blood tests; use to establish rebuttable presumption in DUI cases.

A. A laboratory report from any licensed hospital shall be admissible for the purpose of creating a rebuttable presumption under the provisions of this section, in any prosecution for a violation of § 18.2-36.1 or § 18.2-266 against any person who, while operating a motor vehicle in the Commonwealth, is involved in a motor vehicle accident and who is treated at a licensed hospital within a twenty-four hour period from the time of the motor vehicle accident, and whose blood is drawn by hospital personnel and tested for blood alcohol content, provided that the following are affirmatively proven:

1. There has been an unbroken chain of custody for the blood sample from the person drawing the blood to the technician testing the sample.

2. The procedures employed and the equipment used for the drawing and testing of the blood sample are in accordance with Division of Forensic Science standards and requirements for the drawing and testing of blood samples for alcohol content for hospital facilities and laboratories.

3. The accused had no alcohol introduced into his blood system following the motor vehicle accident and prior to the blood sample being drawn by hospital personnel.

4. There was at the time of testing by the hospital laboratory a 0.12 percent or more by weight by volume of alcohol in the accused's blood.

B. If there was at the time of testing by the hospital laboratory 0.05 percent or less by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants; but this presumption may be rebutted by affirmative evidence that sufficient time had elapsed for the alcohol content of the accused's blood to dissipate through the normal metabolic process.

C. If there was at the time of testing by the hospital laboratory in excess of 0.05 percent, but less than 0.12 percent by weight by volume of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused.

INTRODUCED

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