

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 256

An Act to amend and reenact § 18.2-268.9 of the Code of Virginia, relating to driving while intoxicated.

[H 2318]

Approved March 11, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-268.9 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-268.9. Assurance of breath-test validity; use of test results as evidence.

To be capable of being considered valid as evidence in a prosecution under § 18.2-266 or, § 18.2-266.1, *or a similar ordinance*, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with methods approved by the Department of Criminal Justice Services, Division of Forensic Science. The Division shall test the accuracy of the breath-testing equipment at least once every six months.

The Division shall establish a training program for all individuals who are to administer the breath tests. The program shall include at least forty hours of instruction in the operation of the breath-test equipment and the administration of such tests. Upon a person's successful completion of the training program, the Division may license him to conduct breath-test analyses.

Any individual conducting a breath test under the provisions of § 18.2-268.2 shall issue a certificate which will indicate that the test was conducted in accordance with the Division's specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, that prior to administration of the test the accused was advised of his right to observe the process and see the blood alcohol reading on the equipment used to perform the breath test, the date and time the sample was taken from the accused, the sample's alcohol content, and the name of the person who examined the sample. This certificate, when attested by the individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the Division shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A copy of the certificate shall be promptly delivered to the accused.

The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may make the breath test or analyze the results.