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HOUSE BILL NO. 1173

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 16, 1998)

(Patron Prior to Substitute—Delegate Landes)

A BILL to amend and reenact §§ 18.2-268.7, 18.2-268.9 and 19.2-187 of the Code of Virginia, relating to admission into evidence of certain certificates of analysis.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.7, 18.2-268.9 and 19.2-187 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-268.7. Transmission of blood test results; use as evidence.

Upon receipt of a blood sample forwarded to the Division for analysis pursuant to § 18.2-268.6, the Division 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 by the Division 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, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. The vial and blood sample shall be destroyed after completion of the analysis. A similar certificate of analysis, with the withdrawal certificate from the independent laboratory which analyzes the second blood sample on behalf of the accused, shall be returned to the clerk of the court in which the charge will be heard. The blood sample shall be destroyed after completion of the analysis by the independent laboratory.

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 Division, 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, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the certificate prepared for the second sample shall be admissible in evidence when attested by the pathologist or by the supervisor of the approved laboratory.

Upon request of the person whose blood was analyzed, *the clerk of court shall provide* the test results ~~shall be made available~~ to him. *The clerk of court shall also provide such test results to counsel for the accused upon request.*

The Director may delegate or assign these duties to an employee of the Division of Forensic Science.

§ 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, § 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 clerk of court shall also provide such breath test results to counsel for the accused upon request.*

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

63 § 19.2-187. Admission into evidence of certain certificates of analysis.

64 In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1
65 (§ 19.2-386.1 et seq.) of this title, a certificate of analysis of a person performing an analysis or
66 examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services
67 or the Division of Forensic Science or authorized by such Division to conduct such analysis or
68 examination, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service,
69 the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service, the
70 National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement Administration, or the
71 United States Secret Service Laboratory when such certificate is duly attested by such person, shall be
72 admissible in evidence as evidence of the facts therein stated and the results of the analysis or
73 examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court
74 hearing the case at least seven days prior to the hearing or trial and (ii) a copy of such certificate is
75 mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused
76 at least seven days prior to the hearing or trial upon request of such counsel *except that a certificate of*
77 *analysis for use in prosecutions under §§ 18.2-36.1, 18.2-266 or 18.2-266.1 shall be made available*
78 *pursuant to the provisions of §§ 18.2-268.7 and 18.2-268.9. The procedure by which a certificate of*
79 *analysis of blood alcohol content generated pursuant to the provisions of Chapter 7, Article 2 of Title*
80 *18.2 (§ 18.2-266 et seq.) is made available to the accused or his counsel is set forth in that Article.*

81 The certificate of analysis of any examination conducted by the Division of Forensic Science relating
82 to a controlled substance or marijuana shall be mailed or forwarded by personnel of the Division of
83 Forensic Science to the attorney for the Commonwealth of the jurisdiction where such offense may be
84 heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate on forms
85 provided by the laboratory.

86 Any such certificate of analysis purporting to be signed by any such person shall be admissible as
87 evidence in such hearing or trial without any proof of the seal or signature or of the official character of
88 the person whose name is signed to it.