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HOUSE BILL NO. 3086

Offered January 17, 2007

A *BILL to amend and reenact § 18.2-268.9 of the Code of Virginia, relating to challenging the breath certificate in a DUI case.*

Patrons—Shannon, Rust and Watts

Referred to Committee for Courts of Justice

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, 18.2-266.1, or subsection B of § 18.2-272, 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. The Department shall test the accuracy of the breath-testing equipment at least once every six months.

The Department shall establish a training program for all individuals who are to administer the breath tests. Upon a person's successful completion of the training program, the Department may license him to conduct breath-test analyses. Such license shall identify the specific types of breath test equipment upon which the individual has successfully completed training. 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 Department'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 Department 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. Copies of Department records relating to any breath test conducted pursuant to this section shall be admissible provided such copies are authenticated as true copies either by the custodian thereof or by the person to whom the custodian reports.

The accused may challenge the admissibility of the breath test certificate through proof that (i) the test was not conducted in accordance with the Department's specifications, (ii) the equipment on which the breath test was conducted had not been tested within the past six months and found to be accurate, or (iii) prior to the administration of the test, the accused was not advised of his right to observe the process and see the blood alcohol reading on the equipment used to perform the breath test.

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 administer the breath test and analyze the results.

INTRODUCED

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