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HOUSE BILL NO. 2303

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact § 18.2-268.3 of the Code of Virginia, relating to admissible evidence in a DUI blood test refusal proceeding.

Patrons—Griffith and Albo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-268.3 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-268.3. Refusal of tests; penalties; procedures.

A. It shall be unlawful for a person who is arrested for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance to unreasonably refuse to have samples of his blood or breath or both blood and breath taken for chemical tests to determine the alcohol or drug content of his blood as required by § 18.2-268.2 and any person who so unreasonably refuses is guilty of a violation of this section.

B. When a person is arrested for a violation of § 18.2-51.4, 18.2-266, 18.2-266.1 or, subsection B of § 18.2-272 or of a similar ordinance and such person refuses to permit blood or breath or both blood and breath samples to be taken for testing as required by § 18.2-268.2, the arresting officer shall advise the person, from a form provided by the Office of the Executive Secretary of the Supreme Court, that (i) a person who operates a motor vehicle upon a highway in the Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood and breath taken for chemical tests to determine the alcohol or drug content of his blood, (ii) a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, (iii) the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of the Commonwealth, (iv) the criminal penalty for unreasonable refusal within 10 years of a prior conviction for driving while intoxicated or unreasonable refusal is a Class 2 misdemeanor, and (v) the criminal penalty for unreasonable refusal within 10 years of any two prior convictions for driving while intoxicated or unreasonable refusal is a Class 1 misdemeanor. The form from which the arresting officer shall advise the person arrested shall contain a brief statement of the law requiring the taking of blood or breath samples, a statement that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, and the penalties for refusal.

C. The arresting officer shall, under oath before the magistrate, execute the form and certify, (i) that the defendant has refused to permit blood or breath or both blood and breath samples to be taken for testing; (ii) that the officer has read the portion of the form described in subsection B to the arrested person; (iii) that the arrested person, after having had the portion of the form described in subsection B read to him, has refused to permit such sample or samples to be taken; and (iv) how many, if any, violations of this section, § 18.2-266, or any offense described in subsection E of § 18.2-270 the arrested person has been convicted of within the last 10 years. Such sworn certification shall constitute probable cause for the magistrate to issue a warrant or summons charging the person with unreasonable refusal. The magistrate shall attach the executed and sworn advisement form to the warrant or summons. The warrant or summons for a first offense under this section shall be executed in the same manner as a criminal warrant or summons. If the person arrested has been taken to a medical facility for treatment or evaluation of his medical condition, the arresting officer may read the advisement form to the person at the medical facility, and issue, on the premises of the medical facility, a summons for a violation of this section in lieu of securing a warrant or summons from the magistrate. The magistrate or arresting officer, as the case may be, shall forward the executed advisement form and warrant or summons to the appropriate court. *At any proceeding conducted pursuant to this section, the advisement form may be admitted into evidence as prima facie evidence of the advisement of the arrested person and of execution of the form by the arresting officer.*

D. A first violation of this section is a civil offense and subsequent violations are criminal offenses. For a first offense the court shall suspend the defendant's privilege to drive for a period of one year. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

If a person is found to have violated this section and within 10 years prior to the date of the refusal he was found guilty of any of the following: a violation of this section, a violation of § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270, arising out of separate occurrences or incidents, he is guilty of a Class 2 misdemeanor and the court shall suspend the defendant's privilege to

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59 drive for a period of three years. This suspension period is in addition to the suspension period provided
60 under § 46.2-391.2.

61 If a person is found guilty of a violation of this section and within 10 years prior to the date of the
62 refusal he was found guilty of any two of the following: a violation of this section, a violation of
63 § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270 arising out of separate
64 occurrences or incidents, he is guilty of a Class 1 misdemeanor and the court shall suspend the
65 defendant's privilege to drive for a period of three years. This suspension period is in addition to the
66 suspension period provided under § 46.2-391.2.