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HOUSE BILL NO. 518

Offered January 8, 2014

Prefiled January 6, 2014

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

Patron—Morris

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.7 and 19.2-187 of the Code of Virginia are amended and reenacted as follows: § 18.2-268.7. Transmission of blood test samples; use as evidence.

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 18.2-268.6, the Department 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 or approved by the Department 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, and either (i) attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached or (ii) electronically scan it into the Department's Laboratory Information Management System and place the original withdrawal certificate in its case specific file. The certificate of analysis with and the withdrawal certificate shall be returned or electronically transmitted to the clerk of the court in which the charge will be heard.

B. After completion of the analysis, the Department shall preserve the remainder of the blood until at least 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

C. 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 Department, 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 as evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding, provided the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

Upon request of the person whose blood was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the Department.

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

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.), a certificate of analysis of a person performing an analysis or examination, duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the proceeding if the attorney for the Commonwealth intends to offer it into evidence in a preliminary hearing or the accused intends to offer it into evidence in any hearing or trial, or (ii) the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to

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59 subsection B of § 19.2-187.1, when any such analysis or examination is performed in any laboratory  
60 operated by the Division of Consolidated Laboratory Services or the Department of Forensic Science or  
61 authorized by such Department to conduct such analysis or examination, or performed by a person  
62 licensed by the Department of Forensic Science pursuant to § 18.2-268.9 or 46.2-341.26:9 to conduct  
63 such analysis or examination, or performed by the Federal Bureau of Investigation, the federal Postal  
64 Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal  
65 Investigative Service, the National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement  
66 Administration, the Forensic Document Laboratory of the U.S. Department of Homeland Security, or the  
67 U.S. Secret Service Laboratory.

68 In a hearing or trial in which the provisions of subsection A of § 19.2-187.1 do not apply, a copy of  
69 such certificate shall be mailed or delivered by the clerk or attorney for the Commonwealth to counsel  
70 of record for the accused at no charge at least seven days prior to the hearing or trial upon request made  
71 by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. The  
72 request to the clerk shall be on a form prescribed by the Supreme Court and filed with the clerk at least  
73 10 days prior to the hearing or trial. In the event that a request for a copy of a certificate is filed with  
74 the clerk with respect to a case that is not yet before the court, the clerk shall advise the requester that  
75 he must resubmit the request at such time as the case is properly before the court in order for such  
76 request to be effective. If, upon proper request made by counsel of record for the accused, a copy of  
77 such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to counsel of  
78 record for the accused in a timely manner in accordance with this section, the accused shall be entitled  
79 to continue the hearing or trial.

80 The certificate of analysis of any examination conducted by the Department of Forensic Science  
81 relating to a controlled substance, marijuana, or synthetic cannabinoids as defined in § 18.2-248.1:1 shall  
82 be mailed or forwarded by personnel of the Department of Forensic Science to the attorney for the  
83 Commonwealth of the jurisdiction where such offense may be heard. The attorney for the  
84 Commonwealth shall acknowledge receipt of the certificate on forms provided by the laboratory.

85 Any such certificate of analysis purporting to be signed, *either by hand or by electronic means*, by  
86 any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or  
87 signature or of the official character of the person whose name is signed to it. *The attestation signature*  
88 *of a person performing the analysis or examination may be signed either by hand or by electronic*  
89 *means.*

90 For the purposes of this section and §§ 19.2-187.01, 19.2-187.1, and 19.2-187.2, the term "certificate  
91 of analysis" includes reports of analysis and results of laboratory examination.