

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 759

An Act to amend and reenact § 18.2-267 of the Code of Virginia, relating to preliminary analysis of breath to determine alcoholic content of blood; failure to advise person of rights.

[S 95]

Approved April 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-267 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-267. Preliminary analysis of breath to determine alcoholic content of blood.

A. Any person who is suspected of a violation of § 18.2-266, 18.2-266.1, subsection B of § 18.2-272, or a similar ordinance shall be entitled *have the right*, if such equipment is available, to have his breath analyzed to determine the probable alcoholic content of his blood. The person shall also be entitled, upon request, *have the right* to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of Forensic Science shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of an offense listed in subsection A, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution for an offense listed in subsection A.

D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the officer may charge the person with a violation of an offense listed in subsection A. The person so charged shall then be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance.

E. The results of the breath analysis shall not be admitted into evidence in any prosecution for an offense listed in subsection A, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having committed an offense listed in subsection A.

F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having committed an offense listed in subsection A, advise the person of his rights under the provisions of this section. *If a police officer or a member of any sheriff's department fails to advise a person of his rights under the provisions of this section, any breath sample obtained pursuant to this section shall not be admissible by the Commonwealth in any motion to suppress for the purpose of determining probable cause.*

G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through 18.2-268.12.