

2009 SPECIAL SESSION I

INTRODUCED

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SENATE BILL NO. 5001

Offered August 19, 2009

Prefiled August 4, 2009

A BILL to amend and reenact §§ 9.1-907, 18.2-268.7, 18.2-268.9, 18.2-472.1, 19.2-187, 19.2-187.1, 19.2-243, 46.2-341.26:7, and 46.2-341.26:9 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-3.2, relating to admission of testimonial evidence in criminal matters.

Patron—Cuccinelli

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-907, 18.2-268.7, 18.2-268.9, 18.2-472.1, 19.2-187, 19.2-187.1, 19.2-243, 46.2-341.26:7, and 46.2-341.26:9 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-3.2 as follows:

§ 9.1-907. Procedures upon a failure to register or reregister.

A. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or, if the person failed to comply with the duty to register, in the jurisdiction in which the person was last convicted of an offense for which registration or reregistration is required or if the person was convicted of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person resides. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or reregister. Such affidavit shall be admitted into evidence, upon compliance with the requirements of subsection D of § 18.2-472.1, as prima facie evidence of the failure to comply with the duty to register or reregister in any trial or hearing for the violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

B. Nothing in this section shall prohibit a law-enforcement officer employed by a sheriff's office or police department of a locality from enforcing the provisions of this chapter, including obtaining a warrant, or assisting in obtaining an indictment for a violation of § 18.2-472.1. The local law-enforcement agency shall notify the State Police forthwith of such actions taken pursuant to this chapter or under the authority granted pursuant to this section.

C. The State Police shall physically verify or cause to be physically verified the registration information within 30 days of the initial registration and semiannually each year thereafter and within 30 days of a change of address of those persons who are not under the control of the Department of Corrections or Community Supervision as defined by § 53.1-1, who are required to register pursuant to this chapter. Whenever it appears that a person has provided false registration information, the State Police shall promptly investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the provisions of this chapter. Such affidavit shall be admitted into evidence, upon compliance with the requirements of subsection D of § 18.2-472.1, as prima facie evidence of the failure to comply with the provisions of this chapter in any trial or hearing for the violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

D. The Department of Corrections or Community Supervision as defined by § 53.1-1 shall physically verify the registration information within 30 days of the original registration and semiannually each year thereafter and within 30 days of a change of address of all persons who are under the control of the Department of Corrections or Community Supervision, who are required to register pursuant to this chapter. The Department of Corrections or Community Supervision, upon request, shall provide the State Police the verification information, in an electronic format approved by the State Police, regarding persons under their control who are required to register pursuant to the chapter. Whenever it appears that a person has provided false registration information, the Department of Corrections or Community Supervision shall promptly notify the State Police, who shall investigate and, if there is probable cause

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59 to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a  
60 violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State  
61 Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such  
62 person failed to comply with the provisions of this chapter. Such affidavit shall be admitted into  
63 evidence, *upon compliance with the requirements of subsection D of § 18.2-472.1*, as prima facie  
64 evidence of the failure to comply with the provisions of this chapter in any trial or hearing for the  
65 violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency  
66 of the jurisdiction of the person's last known residence as shown in the records of the State Police.

67 § 18.2-268.7. Transmission of blood test samples; use as evidence.

68 A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to  
69 § 18.2-268.6, the Department shall have it examined for its alcohol or drug or both alcohol and drug  
70 content and the Director shall execute a certificate of analysis indicating the name of the accused; the  
71 date, time and by whom the blood sample was received and examined; a statement that the seal on the  
72 vial had not been broken or otherwise tampered with; a statement that the container and vial were  
73 provided or approved by the Department and that the vial was one to which the completed withdrawal  
74 certificate was attached; ~~and~~ a statement of the sample's alcohol or drug or both alcohol and drug  
75 content *and shall contain notice of the right of the defendant to demand that the person who signed the*  
76 *certificate testify in a criminal proceeding*. The Director shall remove the withdrawal certificate from the  
77 vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed  
78 and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of  
79 the court in which the charge will be heard. After completion of the analysis, the Department shall  
80 preserve the remainder of the blood until 90 days have lapsed from the date the blood was drawn.  
81 During this 90-day period, the accused may, by motion filed before the court in which the charge will  
82 be heard, with notice to the Department, request an order directing the Department to transmit the  
83 remainder of the blood sample to an independent laboratory retained by the accused for analysis. The  
84 Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the  
85 remaining blood sample is received during the 90-day period.

86 B. When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through  
87 18.2-268.6 is forwarded for analysis to the Department, a report of the test results shall be filed in that  
88 office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the  
89 withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any  
90 ~~criminal or~~ civil proceeding, as evidence of the facts therein stated and of the results of such analysis  
91 *and in any criminal proceeding, upon compliance with the requirements of § 19.2-187.1, as evidence of*  
92 *the facts therein stated and of the results of such analysis*. On motion of the accused, the report of  
93 analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is  
94 duly attested by a person performing such analysis and the independent laboratory that performed the  
95 analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the  
96 following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board  
97 (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and  
98 Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American  
99 Board of Forensic Toxicology (ABFT).

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

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

103 § 18.2-268.9. Assurance of breath-test validity; use of breath test results as evidence.

104 To be capable of being considered valid as evidence in a prosecution under § 18.2-266, 18.2-266.1,  
105 or subsection B of § 18.2-272, or a similar ordinance, chemical analysis of a person's breath shall be  
106 performed by an individual possessing a valid license to conduct such tests, with a type of equipment  
107 and in accordance with methods approved by the Department. The Department shall test the accuracy of  
108 the breath-testing equipment at least once every six months. *A record certifying (i) the dates on which*  
109 *such testing for accuracy was performed and (ii) whether the equipment was found to be accurate when*  
110 *tested, shall be maintained as a record of the Department. A copy of the record shall be sent to and*  
111 *maintained by the law-enforcement agency where such breath-testing equipment is located.*

112 The Department shall establish a training program for all individuals who are to administer the breath  
113 tests. Upon a person's successful completion of the training program, the Department may license him to  
114 conduct breath-test analyses. Such license shall identify the specific types of breath test equipment upon  
115 which the individual has successfully completed training. Any individual conducting a breath test under  
116 the provisions of § 18.2-268.2 shall issue a certificate ~~which will indicate~~ that *indicates* the test was  
117 conducted in accordance with the Department's specifications, ~~the equipment on which the breath test~~  
118 ~~was conducted has been tested within the past six months and has been found to be accurate~~, the name  
119 of the accused, that prior to administration of the test the accused was advised of his right to observe  
120 the process and see the blood alcohol reading on the equipment used to perform the breath test, the date

121 and time the sample was taken from the accused, the sample's alcohol content, and the name of the  
 122 person who examined the sample. This certificate, when attested by the individual conducting the breath  
 123 test, shall be admissible in any court in any ~~criminal or~~ civil proceeding as evidence of the facts therein  
 124 stated and of the results of such analysis *or in any criminal proceeding, upon compliance with the*  
 125 *requirements of § 19.2-187.1, as evidence of the facts therein stated and of the results of such analysis.*  
 126 Any such certificate of analysis purporting to be signed by a person authorized by the Department shall  
 127 be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A  
 128 copy of the certificate shall be promptly delivered to the accused *and shall contain notice of the right of*  
 129 *the defendant to demand that the person who conducted the breath test testify in a criminal proceeding.*  
 130 Copies of Department records relating to any breath test conducted pursuant to this section shall be  
 131 admissible provided such copies are authenticated as true copies either by the custodian thereof or by  
 132 the person to whom the custodian reports.

133 The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in  
 134 the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may  
 135 administer the breath test and analyze the results.

136 § 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima  
 137 facie evidence.

138 A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of  
 139 a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or  
 140 reregister, or who knowingly provides materially false information to the Sex Offender and Crimes  
 141 Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an  
 142 offense under this subsection is a Class 6 felony.

143 B. Any person convicted of a sexually violent offense or murder, as defined in § 9.1-902, who  
 144 knowingly fails to register or reregister, or who knowingly provides materially false information to the  
 145 Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. A second or subsequent  
 146 conviction for an offense under this subsection is a Class 5 felony.

147 C. A prosecution pursuant to this section shall be brought in the city or county where the offender  
 148 can be found or where the offender last registered or reregistered or, if the offender failed to comply  
 149 with the duty to register, where the offender was last convicted of an offense for which registration or  
 150 reregistration is required.

151 D. At any trial *or hearing, other than a preliminary hearing*, pursuant to this section, *in which an*  
 152 *affidavit from the State Police issued as required in § 9.1-907 shall be is to be* admitted into evidence as  
 153 prima facie evidence of the failure to comply with the duty to register or reregister ~~and~~, a copy of such  
 154 affidavit shall be provided to the registrant or his counsel ~~seven~~ 21 days prior to hearing or trial by the  
 155 attorney for the Commonwealth. *The attorney for the Commonwealth shall provide written notice to the*  
 156 *registrant or his counsel at least 21 days prior to the hearing or trial that he intends to introduce such*  
 157 *affidavit into evidence and that the registrant has the right to demand that the affiant testify. If the*  
 158 *registrant or his counsel objects in writing to such introduction within 21 days of receipt of such notice,*  
 159 *or at least 10 days prior to trial, whichever is earlier, the Commonwealth shall summon the affiant and*  
 160 *require him to be available at the trial or hearing. If the registrant or his counsel does not object in*  
 161 *writing to the attorney for the Commonwealth within 21 days of receipt of such notice, or at least 10*  
 162 *days prior to trial, whichever is earlier, the registrant shall have waived objection to introduction of the*  
 163 *affidavit at the trial upon the basis of absence of the affiant.*

164 *At any preliminary hearing pursuant to this section an affidavit from the State Police issued as*  
 165 *required in § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply*  
 166 *with the duty to register or reregister and a copy of such affidavit shall be provided to the registrant or*  
 167 *his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.*

168 E. The accused in any hearing or trial in which an affidavit from the State Police issued as required  
 169 in § 9.1-907 is admitted into evidence pursuant to this section shall have the right to call the custodian  
 170 of records issuing the affidavit and examine him in the same manner as if he had been called as an  
 171 adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

172 F. For the purposes of this section any conviction for a substantially similar offense under the laws  
 173 of (i) any foreign country or any political subdivision thereof, or (ii) any state or territory of the United  
 174 States or any political subdivision thereof, the District of Columbia, or the United States shall be  
 175 considered a prior conviction.

176 § 19.2-3.2. Testimony by person preparing certificates of analysis, etc., using two-way electronic  
 177 video and audio communication.

178 A. *In any criminal proceeding where a certificate, affidavit, or other similar document may be*  
 179 *admitted into evidence pursuant to § 18.2-268.9, 18.2-472.1, 19.2-187, or 19.2-188.1, the person who*  
 180 *prepared the certificate, affidavit, or other similar document shall, upon motion of the attorney for the*  
 181 *Commonwealth in the interest of substantial justice, for good cause shown, be permitted to have his*

182 *testimony taken in a room outside the courtroom and be transmitted by two-way electronic video and*  
183 *audio communication, provided the courtroom and remote locale are outfitted with the equipment*  
184 *required for such communication.*

185 *B. The testimony of the person permitted to testify via two-way electronic video and audio*  
186 *communication shall be transmitted into the courtroom for the defendant, jury, judge, and public to*  
187 *view. The defendant shall be provided with a means of private, contemporaneous communication with*  
188 *his attorney during the testimony. In addition, any two-way electronic video and audio communication*  
189 *system used pursuant to subsection A shall meet the standards set forth in subsection B of § 19.2-3.1.*

190 *C. Notwithstanding any other provision of law, none of the cost of the two-way electronic video and*  
191 *audio communication system shall be assessed against the defendant.*

192 § 19.2-187. Admission into evidence of certain certificates of analysis.

193 In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1  
194 (§ 19.2-386.1 et seq.) of this title, a certificate of analysis of a person performing an analysis or  
195 examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services  
196 or the Department of Forensic Science or authorized by such Department to conduct such analysis or  
197 examination, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service,  
198 the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service, the  
199 National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement Administration, or the  
200 United States Secret Service Laboratory when such certificate is duly attested by such person, shall be  
201 admissible in evidence as evidence of the facts therein stated and the results of the analysis or  
202 examination referred to therein, provided (i) the requirements of § 19.2-187.1 have been satisfied, and  
203 (ii) the certificate of analysis is filed with the clerk of the court hearing the case at least seven 25 days  
204 prior to the hearing or trial.

205 A copy of such certificate shall be mailed or delivered by the clerk or attorney for the  
206 Commonwealth to counsel of record for the accused at no charge at least seven 21 days prior to the  
207 hearing or trial upon request made by such counsel to the clerk with notice of the request to the attorney  
208 for the Commonwealth. The request to the clerk shall be on a form prescribed by the Supreme Court  
209 and filed with the clerk at least 10 days prior to trial. In the event that a request for a copy of a  
210 certificate is filed with the clerk with respect to a case that is not yet before the court, the clerk shall  
211 advise the requester that he must resubmit the request at such time as the case is properly before the  
212 court in order for such request to be effective and shall contain notice of the right of the defendant to  
213 demand that the person who performed the analysis or examination testify at trial or in any hearing  
214 other than a preliminary hearing. If, upon proper request made by counsel of record for the accused, a  
215 copy of such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to  
216 counsel of record for the accused in a timely manner in accordance with this section, the defendant shall  
217 be entitled to continue the hearing or trial.

218 The certificate of analysis of any examination conducted by the Department of Forensic Science  
219 relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the  
220 Department of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such  
221 offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate  
222 on forms provided by the laboratory.

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

226 § 19.2-187.1. Right to examine person performing analysis, or involved in chain of custody.

227 The accused in any hearing or trial, or hearing other than a preliminary hearing, in which a  
228 certificate of analysis is to be admitted into evidence pursuant to § 18.2-268.9, 19.2-187 or §  
229 19.2-187.01 shall have the right to call the person performing may object to the introduction of such  
230 certificate of analysis or examination or involved in the chain of custody. If he objects in writing to the  
231 attorney for the Commonwealth within 21 days of receipt of the certificate, or at least 10 days prior to  
232 the hearing or trial, whichever is earlier, the Commonwealth shall summon the person who performed  
233 the analysis or examination and require him to be available at the hearing or trial as a witness therein;  
234 and. If the accused or his counsel does not object, the accused shall have waived objection to  
235 introduction of the certificate at the trial or hearing upon the basis of absence of the person who  
236 performed the analysis or examination. The accused may examine him such person in the same manner  
237 as if he had been called as an adverse witness by the accused. Such witness shall be summoned and  
238 appear at the cost of the Commonwealth.

239 The accused in any trial or hearing in which a certificate of analysis is admitted into evidence  
240 pursuant to § 19.2-187 or 19.2-187.01 shall have the right to call a person involved in the chain of  
241 custody as a witness therein and examine him in the same manner as if he had been called as an  
242 adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

243 Nothing in this section shall be construed to prohibit or limit the right of a defendant to call as a

244 witness in any hearing or trial the person who performed the analysis or examination and examine him  
245 in the same manner as if he had been called as an adverse witness. Such witness shall be summoned  
246 and appear at the cost of the Commonwealth.

247 § 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause;  
248 misdemeanors; exceptions.

249 Where a district court has found that there is probable cause to believe that an adult has committed a  
250 felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from  
251 prosecution for such offense if no trial is commenced in the circuit court within five months from the  
252 date such probable cause was found by the district court; and if the accused is not held in custody but  
253 has been recognized for his appearance in the circuit court to answer for such offense, he shall be  
254 forever discharged from prosecution therefor if no trial is commenced in the circuit court within nine  
255 months from the date such probable cause was found.

256 If there was no preliminary hearing in the district court, or if such preliminary hearing was waived  
257 by the accused, the commencement of the running of the five and nine months periods, respectively, set  
258 forth in this section, shall be from the date an indictment or presentment is found against the accused.

259 If an indictment or presentment is found against the accused but he has not been arrested for the  
260 offense charged therein, the five and nine months periods, respectively, shall commence to run from the  
261 date of his arrest thereon.

262 Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic  
263 infraction in a district court, the accused shall be forever discharged from prosecution for such offense if  
264 the trial de novo in the circuit court is not commenced (i) within five months from the date of the  
265 conviction if the accused has been held continuously in custody or (ii) within nine months of the date of  
266 the conviction if the accused has been recognized for his appearance in the circuit court to answer for  
267 such offense.

268 The provisions of this section shall not apply to such period of time as the failure to try the accused  
269 was caused:

270 1. By his insanity or by reason of his confinement in a hospital for care and observation;

271 2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending  
272 by sickness or accident;

273 3. By the granting of a separate trial at the request of a person indicted jointly with others for a  
274 felony;

275 4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the  
276 accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the  
277 accused or his counsel to make a timely objection to such a motion by the attorney for the  
278 Commonwealth, or by reason of his escaping from jail or failing to appear according to his  
279 recognizance;

280 5. By the inability of the jury to agree in their verdict; or

281 6. *By continuance granted on the motion of the Commonwealth, for good cause shown, for the*  
282 *purpose of obtaining the presence of the person who performed an analysis or examination or who*  
283 *executed an affidavit or certificate and whose testimony is required pursuant to § 18.2-268.9, 18.2-472.1*  
284 *or 19.2-187.1; or*

285 7. By a natural disaster, civil disorder, or act of God.

286 But the time during the pendency of any appeal in any appellate court shall not be included as  
287 applying to the provisions of this section.

288 For the purposes of this section, an arrest on an indictment or warrant or information or presentment  
289 is deemed to have occurred only when such indictment, warrant, information, or presentment or the  
290 summons or capias to answer such process is served or executed upon the accused and a trial is deemed  
291 commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere is  
292 tendered by the defendant. The lodging of a detainer or its equivalent shall not constitute an arrest under  
293 this section.

294 § 46.2-341.26:7. Transmission of samples.

295 A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to  
296 § 46.2-341.26:6, the Department shall have it examined for its alcohol or drug content, and the Director  
297 shall execute a certificate of analysis indicating the name of the suspect; the date, time, and by whom  
298 the blood sample was received and examined; a statement that the seal on the vial had not been broken  
299 or otherwise tampered with; a statement that the container and vial were provided or approved by the  
300 Department and that the vial was one to which the completed withdrawal certificate was attached; and a  
301 statement of the sample's alcohol or drug content, and shall contain notice of the right of the defendant  
302 to demand that the person who signed the certificate testify in a criminal proceeding. The Director or  
303 his representative shall remove the withdrawal certificate from the vial, attach it to the certificate of  
304 analysis and state in the certificate of analysis that it was so removed and attached. The certificate of

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

313 B. When a blood sample taken in accordance with the provisions of §§ 46.2-341.26:2 through  
314 46.2-341.26:6 is forwarded for analysis to the Department, a report of the test results shall be filed in  
315 that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with  
316 the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in  
317 any ~~criminal or~~ civil proceeding, as evidence of the facts therein stated and of the results of such  
318 analysis *or in any criminal proceeding, upon compliance with the requirements of § 19.2-187.1, as*  
319 *evidence of the facts therein stated and of the results of such analysis.* On motion of the accused, the  
320 report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the  
321 report is duly attested by a person performing such analysis and the independent laboratory that  
322 performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or  
323 more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation  
324 Board (ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health  
325 and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or  
326 American Board of Forensic Toxicology (ABFT).

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

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

330 § 46.2-341.26:9. Assurance of breath test validity; use of breath test results as evidence.

331 To be capable of being considered valid in a prosecution under § 46.2-341.24 or 46.2-341.31,  
332 chemical analysis of a person's breath shall be performed by an individual possessing a valid license to  
333 conduct such tests, with the type of equipment and in accordance with methods approved by the  
334 Department under the provisions of § 18.2-268.9. *The Department shall test the accuracy of the*  
335 *breath-testing equipment at least once every six months. A record certifying (i) the dates on which such*  
336 *testing of accuracy was performed and (ii) whether the equipment was found to be accurate when tested,*  
337 *shall be maintained as a record of the Department. A copy of the record shall be sent to and*  
338 *maintained by the law-enforcement agency where such breath-testing equipment is located.*

339 Any individual conducting a breath test under the provisions of § 46.2-341.26:2 shall issue a  
340 certificate which includes the name of the suspect, the date and time the sample was taken from the  
341 suspect, the alcohol content of the sample, and the identity of the person who examined the sample. The  
342 certificate ~~will~~ *shall* also indicate that the test was conducted in accordance with the Department's  
343 specifications ~~and that the equipment on which the breath test was conducted has been tested within the~~  
344 ~~past six months and has been found to be accurate.~~ *The certificate shall also contain notice of the right*  
345 *of the defendant to demand that the person who signed the certificate testify in a criminal proceeding.*  
346 The certificate, when attested by the authorized individual conducting the breath test, shall be admissible  
347 in any court in any ~~criminal or~~ civil proceeding as evidence of the facts therein stated and of the results  
348 of such analysis *or in any criminal proceeding, upon compliance with the requirements of § 19.2-187.1,*  
349 *as evidence of the facts therein stated and of the results of such analysis.* Any such certificate of  
350 analysis purporting to be signed by a person authorized by the Department shall be admissible in  
351 evidence without proof of seal or signature of the person whose name is signed to it.

352 A copy of such certificate shall be promptly delivered to the suspect. The law-enforcement officer  
353 requiring the test or anyone with such officer at the time if otherwise qualified to conduct such test as  
354 provided by this section, may administer the breath test or analyze the results thereof.

355 **2. That an emergency exists and this act is in force from its passage.**