

AN ORDINANCE to amend and reordain subsections (b), (c), (g), (i), (j), (l), (m) and (s) of Section 22-93.1, and to further amend Section 22-93.1 by adding thereto a new subsection lettered (r1), all of Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended; which Chapter 22 relates to MOTOR VEHICLES AND TRAFFIC, which Article III relates to OPERATION OF VEHICLES, which Division 4 relates to DRIVING AUTOMOBILE, ENGINE, ETC., WHILE UNDER INFLUENCE OF INTOXICANTS OR NARCOTICS, which Section 22-93.1 relates to USE OF CHEMICAL TEST TO DETERMINE ALCOHOL IN BLOOD; PROCEDURE; QUALIFICATIONS AND LIABILITY OF PERSON WITHDRAWING BLOOD; COSTS; EVIDENCE; SUSPENSION OF LICENSE FOR REFUSAL TO SUBMIT TO TEST, which subsection (b) thereof relates to ELECTION OF EITHER BREATH OR BLOOD TEST, which subsection (c) thereof relates to REFUSAL TO TAKE BLOOD OR BREATH TEST, which subsection (g) thereof relates to AVAILABILITY OF BLOOD OR BREATH TEST RESULTS TO DRIVER, which subsection (i) thereof relates to REFUSAL TO TAKE BLOOD OR BREATH TEST IN TRIAL FOR VIOLATION OF SECTION 22-93, which subsection (j) thereof relates to FORM FOR DECLARATION OF REFUSAL, which subsection (l) thereof relates to COURT TO SET DATE FOR TRIAL OF CHARGE OF REFUSAL TO TAKE BLOOD OR BREATH TEST, which subsection (m) thereof relates to DECLARATION OF REFUSAL AS PRIMA FACIE EVIDENCE, which subsection (s) thereof relates to STEPS RELATING TO TAKING BLOOD OR BREATH SAMPLE - PROCEDURAL IN NATURE, and which new subsection (r1) thereof relates to QUALIFICATIONS FOR PERSONS ADMINISTERING BREATH TESTS AND SPECIFICATIONS FOR BREATH TEST EQUIPMENT.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That subsection (b) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(b) Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a street in this city on and after January one, nineteen hundred seventy three, shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, if such person is arrested for a violation of section 22-93 within two hours of the alleged offense. Any person so arrested shall elect to have either the breath or blood sample taken, but not both. It shall not be a matter of defense that either test is not available.

Section 2. That subsection (c) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(c) If a person after being arrested for a violation of section 22-93 and after having been advised by the arresting officer that a person who operates a motor vehicle upon a street in this city shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the streets of this city, then refuses to permit the taking of a sample of his blood or breath for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been further advised by such magistrate of the law requiring a blood or breath test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the chief medical examiner of Virginia (hereinafter referred to as chief medical examiner), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j)), then no blood or breath sample shall be taken even though he may thereafter request same.

Section 3. That subsection (g) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(g) Upon the request of the person whose blood or breath sample was taken for a chemical test to determine the alcoholic content of his blood, the results of such test or tests shall be made available to him.

Section 4. That subsection (i) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(i) In any trial for a violation of section 22-93, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood or breath test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood or breath to be taken for a chemical test to determine the alcoholic content of his blood is not evidence and shall not be subject to comment at the trial of the case; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment.

Section 5. That subsection (j) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(j) The form referred to in paragraph (c) shall contain a brief statement of the law requiring the taking of a blood or breath sample and the penalty for refusal, a declaration of refusal and lines for the signature of the person from whom the blood or breath sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood with violation of this section. The warrant shall be executed in the same manner as criminal warrants.

Section 6. That subsection (l) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(l) When the court received the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood or breath taken for the determination of the alcoholic content of his blood, the court shall fix a date for the trial of said warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

Section 7. That subsection (m) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood. The court shall determine the reasonableness of such refusal.

Section 8. That subsection (s) of Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood or breath samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

Section 9. That Section 22-93.1, Division 4, Article III, Chapter 22 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding thereto a new subsection lettered (rl) to read as follows:

(rl) Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with the methods approved by the state health commissioner. Such breath testing equipment shall be tested for its accuracy by the state health commissioner's office at least once every six months.

Any individual conducting a breath test under the provisions of this section and as authorized by the state health commissioner shall issue a certificate which will indicate that the test was conducted in accordance with the manufacturer's specifications, the equipment on which the breath test was conducted has been tested within the past six months, the name of the accused, the date, the time the sample was taken from the accused, the alcoholic content of the sample, and by whom the sample was examined. The certificate, as provided for in this section, when duly attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal proceeding as evidence of the alcoholic content of the blood of the accused. In no case may the officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, make the breath test or analyze the results thereof.

Section 10. That this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The clerk of the council shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective January 1, 1973.

Charles E. Beatley, Jr.
Mayor

FINAL PASSAGE: DECEMBER 12, 1972