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H.228

Introduced by Representatives Potter of Clarendon, Bissonnette of Winooski,
Brennan of Colchester, Burditt of West Rutland, Canfield of
Fair Haven, Eastman of Orwell, Helm of Fair Haven, Pearce of
Richford, Quimby of Concord, Russell of Rutland City, Savage
of Swanton, Shaw of Pittsford, and Tate of Mendon

Referred to Committee on

Date:

Subject: Driving under the influence; marijuana

Statement of purpose of bill as introduced: This bill proposes to add saliva
testing to the tests that may be conducted on operators of motor vehicles
reasonably suspected to be under the influence.

An act relating to adding saliva testing to the DUI statutes

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 23 V.S.A. § 1200 is amended to read:

§ 1200. DEFINITIONS

As used in this subchapter:

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(c) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway and be involved in an accident or collision resulting in serious bodily injury or death to another and refuse a law enforcement officer's reasonable request under the circumstances for an evidentiary test where the officer has reasonable grounds to believe the person has any amount of alcohol or drugs in the system.

* * *

(i) For purposes of subdivision (a)(5) of this section, the defendant may assert as an affirmative defense that he or she had the drug in his or her blood as the result of taking medication pursuant to a valid prescription.

Sec. 3. 23 V.S.A. § 1202 is amended to read:

§ 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
ALCOHOL CONTENT OR DRUG IMPAIRMENT

(a)(1) Implied consent. Every person who operates, attempts to operate, or is in actual physical control of any vehicle on a highway in this State is deemed to have given consent to an evidentiary test of that person's breath or saliva for the purpose of determining the person's alcohol concentration or the presence of other drug in the blood. The test shall be administered at the direction of a law enforcement officer.

1 (b) Only a physician, licensed nurse, medical technician, physician
2 assistant, medical technologist, or laboratory assistant acting at the request of a
3 law enforcement officer may withdraw blood for the purpose of determining
4 the presence of alcohol or other drug. This limitation does not apply to the
5 taking of a breath or saliva sample.

6 (c) When a ~~breath test~~ chemical analysis which is intended to be introduced
7 in evidence is taken with a ~~crimper device~~ an infrared device or a saliva swab,
8 or when blood is withdrawn at an officer's request, a sufficient amount of
9 breath, saliva, or blood, as the case may be, shall be taken to enable the person
10 to have made an independent analysis of the sample, and shall be held for at
11 least 45 days from the date the sample was taken. At any time during that
12 period, the person may direct that the sample be sent to an independent
13 laboratory of the person's choosing for an independent analysis. The
14 Department of Public Safety shall adopt rules providing for the security of the
15 sample. At no time shall the defendant or any agent of the defendant have
16 access to the sample. A preserved sample of breath shall not be required when
17 an infrared breath-testing instrument is used. A person tested with an infrared
18 breath-testing instrument shall have the option of having a second infrared test
19 administered immediately after receiving the results of the first test.

20 (d) In the case of a breath test administered using an infrared ~~breath-testing~~
21 breath-testing instrument, the test shall be analyzed in compliance with rules

1 adopted by the Department of Public Safety. The analyses shall be retained by
2 the State. A sample is adequate if the infrared ~~breath-testing~~ breath-testing
3 instrument analyzes the sample and does not indicate the sample is deficient.
4 Analysis of the person's breath, saliva, or blood which is available to that
5 person for independent analysis shall be considered valid when performed
6 according to methods approved by the Department of Public Safety. The
7 analysis performed by the State shall be considered valid when performed
8 according to a method or methods selected by the Department of Public Safety.
9 The Department of Public Safety shall use rule making procedures to select its
10 method or methods. Failure of a person to provide an adequate breath or saliva
11 sample constitutes a refusal.

12 (e) [Repealed.]

13 (f) When a law enforcement officer has reason to believe that a person may
14 be violating or has violated section 1201 of this title, the officer may request
15 the person to provide a sample of breath or saliva for a preliminary screening
16 test using a device approved by the Commissioner of Public Safety for this
17 purpose. The person shall not have the right to consult an attorney prior to
18 submitting to this preliminary ~~breath alcohol screening test~~ chemical analysis
19 screening. The results of this preliminary screening test may be used for the
20 purpose of deciding whether an arrest should be made and whether to request
21 an evidentiary test and shall not be used in any court proceeding except on

1 those issues. Following the screening test, additional tests may be required of
2 the operator pursuant to the provisions of section 1202 of this title.

3 (g) The Office of the Chief Medical Examiner shall report in writing to the
4 Department of Motor Vehicles the death of any person as the result of an
5 accident involving a vehicle and the circumstances of such accident within five
6 days of such death.

7 (h) A Vermont law enforcement officer shall have a right to request a
8 breath, saliva, or blood sample in an adjoining state or country under this
9 section unless prohibited by the law of the other state or country. If the law in
10 an adjoining state or country does not prohibit an officer acting under this
11 section from taking a breath, saliva, or blood sample in its jurisdiction,
12 evidence of such sample shall not be excluded in the courts of this State solely
13 on the basis that the test was taken outside the State.

14 (i) The Commissioner of Public Safety shall adopt emergency rules relating
15 to the operation, maintenance, and use of preliminary drug or alcohol screening
16 devices for use by law enforcement officers in enforcing the provisions of this
17 title. The ~~commissioner~~ Commissioner shall consider relevant standards of the
18 National Highway Traffic Safety Administration in adopting such rules. Any
19 preliminary alcohol screening device authorized for use under this title shall be
20 on the qualified products list of the National Highway Traffic Safety
21 Administration.

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Sec. 5. 23 V.S.A. § 1203a is amended to read:

§ 1203a. INDEPENDENT CHEMICAL TEST; BLOOD TESTS

(a) A person tested has the right at the person's own expense to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of the law enforcement officer under section 1203 of this title. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of an enforcement officer unless the additional test was prevented or denied by the enforcement officer.

(b) Arrangements for a blood test shall be made by the person submitting to the evidentiary ~~breath test~~ chemical analysis, by the person's attorney, or by some other person acting on the person's behalf unless the person is detained in custody after administration of the evidentiary test and upon completion of processing, in which case the law enforcement officer having custody of the person shall make arrangements for administration of the blood test upon demand but at the person's own expense.

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Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.