1	H.228
2	Introduced by Representatives Potter of Clarendon, Bissonnette of Winooski,
3	Brennan of Colchester, Burditt of West Rutland, Canfield of
4	Fair Haven, Eastman of Orwell, Helm of Fair Haven, Pearce of
5	Richford, Quimby of Concord, Russell of Rutland City, Savage
6	of Swanton, Shaw of Pittsford, and Tate of Mendon
7	Referred to Committee on
8	Date:
9	Subject: Driving under the influence; marijuana
10	Statement of purpose of bill as introduced: This bill proposes to add saliva
11	testing to the tests that may be conducted on operators of motor vehicles
12	reasonably suspected to be under the influence.
13	An act relating to adding saliva testing to the DUI statutes
14	It is hereby enacted by the General Assembly of the State of Vermont:
15	Sec. 1. 23 V.S.A. § 1200 is amended to read:
16	§ 1200. DEFINITIONS
17	As used in this subchapter:
18	* * *

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1	(3) "Evidentiary test" means a breath, saliva, or blood test which
2	indicates the person's alcohol concentration or the presence of other drug and
3	which is intended to be introduced as evidence.
4	* * *
5	Sec. 2. 23 V.S.A. § 1201 is amended to read:
6	§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF
7	INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL
8	REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE
9	(a) A person shall not operate, attempt to operate, or be in actual physical
10	control of any vehicle on a highway:
11	(1) when the person's alcohol concentration is $0.08$ or more, or $0.02$ or
12	more if the person is operating a school bus as defined in subdivision $4(34)$ of
13	this title; <del>or</del>
14	(2) when the person is under the influence of intoxicating liquor; $\Theta$
15	(3) when the person is under the influence of any other drug or under the
16	combined influence of alcohol and any other drug; or
17	(4) when the person's alcohol concentration is $0.04$ or more if the person
18	is operating a commercial motor vehicle as defined in subdivision 4103(4) of
19	this title <u>: or</u>
20	(5) when the person has any detectable amount of any regulated drug, as
21	defined in 18 V.S.A. § 4201(29) in his or her body.

1	* * *
2	(c) A person shall not operate, attempt to operate, or be in actual physical
3	control of any vehicle on a highway and be involved in an accident or collision
4	resulting in serious bodily injury or death to another and refuse a law
5	enforcement officer's reasonable request under the circumstances for an
6	evidentiary test where the officer has reasonable grounds to believe the person
7	has any amount of alcohol or drugs in the system.
8	* * *
9	(i) For purposes of subdivision (a)(5) of this section, the defendant may
10	assert as an affirmative defense that he or she had the drug in his or her blood
11	as the result of taking medication pursuant to a valid prescription.
12	Sec. 3. 23 V.S.A. § 1202 is amended to read:
13	§ 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
14	ALCOHOL CONTENT OR DRUG IMPAIRMENT
15	(a)(1) Implied consent. Every person who operates, attempts to operate, or
16	is in actual physical control of any vehicle on a highway in this State is deemed
17	to have given consent to an evidentiary test of that person's breath or saliva for
18	the purpose of determining the person's alcohol concentration or the presence
19	of other drug in the blood. The test shall be administered at the direction of a
20	law enforcement officer.

1	(2) Blood test. If breath or saliva testing equipment is not reasonably
2	available or if the officer has reason to believe that the person is unable to give
3	a sufficient sample of breath or saliva for testing or if the law enforcement
4	officer has reasonable grounds to believe that the person is under the influence
5	of a drug other than alcohol, the person is deemed to have given consent to the
6	taking of an evidentiary sample of blood. If in the officer's opinion the person
7	is incapable of decision or unconscious or dead, it is deemed that the person's
8	consent is given and a sample of blood shall be taken.
9	* * *
10	(5) Saliva test. Any saliva test administered under this section shall be
11	used only for the limited purpose of determining the presence of a drug in the
12	person's body.
13	Sec. 4. 23 V.S.A. § 1203 is amended to read:
14	§ 1203. ADMINISTRATION OF TESTS CHEMICAL ANALYSIS;
15	RETENTION OF TEST ANALYSIS AND VIDEOTAPE
16	(a) A breath test chemical analysis shall be administered only by a person
17	who has been certified by the Vermont Criminal Justice Training Council to
18	operate the breath testing chemical analysis equipment being employed. In
19	any proceeding under this subchapter, a person's testimony that he or she is
20	certified to operate the breath testing chemical analysis equipment employed
21	shall be prima facie evidence of that fact.

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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

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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.

1	* * *
2	Sec. 5. 23 V.S.A. § 1203a is amended to read:
3	§ 1203a. INDEPENDENT CHEMICAL TEST; BLOOD TESTS
4	(a) A person tested has the right at the person's own expense to have
5	someone of the person's own choosing administer a chemical test or tests in
6	addition to any administered at the direction of the law enforcement officer
7	under section 1203 of this title. The failure or inability to obtain an additional
8	test or tests by a person shall not preclude the admission in evidence of the test
9	taken at the direction of an enforcement officer unless the additional test was
10	prevented or denied by the enforcement officer.
11	(b) Arrangements for a blood test shall be made by the person submitting to
12	the evidentiary breath test chemical analysis, by the person's attorney, or by
13	some other person acting on the person's behalf unless the person is detained
14	in custody after administration of the evidentiary test and upon completion of
15	processing, in which case the law enforcement officer having custody of the
16	person shall make arrangements for administration of the blood test upon
17	demand but at the person's own expense.
18	* * *
19	Sec. 6. EFFECTIVE DATE
20	This act shall take effect on passage.