

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Transportation to which was referred House Bill No.
3 228 entitled “An act relating to adding saliva testing to the DUI statutes”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

8 § 1200. DEFINITIONS

9 As used in this subchapter:

10 * * *

11 (3) “Evidentiary test” means a breath, saliva, or blood test which
12 indicates the person’s alcohol concentration or the presence of other drug and
13 which is intended to be introduced as evidence.

14 * * *

15 Sec. 2. 23 V.S.A. § 1201 is amended to read:

16 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF

17 INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL

18 REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

19 (a) A person shall not operate, attempt to operate, or be in actual physical
20 control of any vehicle on a highway:

1 (e) ~~The~~ Except as provided in subsection (h) of this section, the fact that a
2 person charged with a violation of this section is or has been entitled to use a
3 drug under the laws of this State shall not constitute a defense against any
4 charge of violating this section.

5 (f) A person may not be convicted of more than one violation of subsection
6 (a) of this section arising out of the same incident.

7 (g) For purposes of this section and section 1205 of this title, the defendant
8 may assert as an affirmative defense that the person was not operating,
9 attempting to operate, or in actual physical control of the vehicle because the
10 person:

11 (1) had no intention of placing the vehicle in motion; and

12 (2) had not placed the vehicle in motion while under the influence.

13 (h) It shall be an affirmative defense to a charge under subdivision (a)(5) of
14 this section that the defendant was not under the influence at the time of the
15 alleged offense, and the defendant had the regulated drug or its psychoactive
16 metabolite in his or her body as a result of:

17 (1) taking medication pursuant to and in accordance with a valid
18 prescription;

19 (2) taking nonprescription, over-the-counter medication as directed by
20 the product label; or

1 (3) using marijuana for medical symptom relief and the defendant is a
2 registered patient pursuant to 18 V.S.A. § 4472.

3 (i) As used in subdivision (a)(3) and subsection (h) of this section, “under
4 the influence of a drug” means that a person’s ability to operate a motor
5 vehicle safely is diminished or impaired in the slightest degree. This
6 subsection shall not be construed to affect the meaning of the term “under the
7 influence of intoxicating liquor.”

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

9 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD

10 ALCOHOL CONTENT OR DRUG IMPAIRMENT

11 (a)~~(1)~~ Implied consent.

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

18 (2) Blood test. If breath testing equipment is not reasonably available or
19 if the officer has reason to believe that the person is unable to give a sufficient
20 sample of breath for testing or if the law enforcement officer has reasonable
21 grounds to believe that the person is under the influence of a drug other than

1 alcohol, the person is deemed to have given consent to the taking of an
2 evidentiary sample of blood. If in the officer's opinion the person is incapable
3 of decision or unconscious or dead, it is deemed that the person's consent is
4 given and a sample of blood shall be taken.

5 (3) Saliva test. If the law enforcement officer has reasonable grounds to
6 believe that the person is under the influence of a drug other than alcohol, the
7 person is deemed to have given consent to the taking of an evidentiary sample
8 of saliva. Any saliva test administered under this section shall be used only for
9 the limited purpose of detecting the presence of a drug in the person's body,
10 and shall not be used to extract DNA information.

11 ~~(3)~~(4) Evidentiary test. The evidentiary test shall be required of a
12 person when a law enforcement officer has reasonable grounds to believe that
13 the person was operating, attempting to operate, or in actual physical control of
14 a vehicle in violation of section 1201 of this title.

15 ~~(4)~~(5) Fatal collision or incident resulting in serious bodily injury. The
16 evidentiary test shall also be required if the person is the surviving operator of
17 a motor vehicle involved in a fatal incident or collision or an incident or
18 collision resulting in serious bodily injury and the law enforcement officer has
19 reasonable grounds to believe that the person has any amount of alcohol or
20 other drug in his or her system.

21 * * *

1 Sec. 4. 23 V.S.A. § 1203 is amended to read:

2 § 1203. ADMINISTRATION OF TESTS;

3 RETENTION OF TEST AND VIDEOTAPE

4 (a) A breath test shall be administered only by a person who has been
5 certified by the Vermont Criminal Justice Training Council to operate the
6 breath testing equipment being employed. In any proceeding under this
7 subchapter, a person's testimony that he or she is certified to operate the breath
8 testing equipment employed shall be prima facie evidence of that fact.

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

14 (c) When a breath test which is intended to be introduced in evidence is
15 taken with a crimper device, or when blood is withdrawn at an officer's
16 request, a sufficient amount of breath, or blood, as the case may be, shall be
17 taken to enable the person to have made an independent analysis of the sample,
18 and shall be held for at least 45 days from the date the sample was taken. At
19 any time during that period, the person may direct that the sample be sent to an
20 independent laboratory of the person's choosing for an independent analysis.
21 The Department of Public Safety shall adopt rules providing for the security of

1 the sample. At no time shall the defendant or any agent of the defendant have
2 access to the sample. A preserved sample of breath shall not be required when
3 an infrared breath-testing instrument is used. A person tested with an infrared
4 breath-testing instrument shall have the option of having a second infrared test
5 administered immediately after receiving the results of the first test.

6 (d) In the case of a breath test administered using an infrared ~~breath-testing~~
7 breath-testing instrument, the test shall be analyzed in compliance with rules
8 adopted by the Department of Public Safety. The analyses shall be retained by
9 the State. A sample is adequate if the infrared ~~breath-testing~~ breath-testing
10 instrument analyzes the sample and does not indicate the sample is deficient.
11 Analysis of the person's breath, saliva, or blood which is available to that
12 person for independent analysis shall be considered valid when performed
13 according to methods approved by the Department of Public Safety. The
14 analysis performed by the State shall be considered valid when performed
15 according to a method or methods selected by the Department of Public Safety.
16 The Department of Public Safety shall use rule making procedures to select its
17 method or methods. Failure of a person to provide an adequate breath or saliva
18 sample constitutes a refusal.

19 (e) [Repealed.]

20 (f) When a law enforcement officer has reason to believe that a person may
21 be violating or has violated section 1201 of this title, the officer may request

1 the person to provide a sample of breath or saliva for a preliminary screening
2 test using a device approved by the Commissioner of Public Safety for this
3 purpose. The person shall not have the right to consult an attorney prior to
4 submitting to this preliminary ~~breath-alcohol~~ screening test. The results of this
5 preliminary screening test may be used for the purpose of deciding whether an
6 arrest should be made and whether to request an evidentiary test and shall not
7 be used in any court proceeding except on those issues. Following the
8 screening test, additional tests may be required of the operator pursuant to the
9 provisions of section 1202 of this title.

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

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

1 (i) The Commissioner of Public Safety shall adopt emergency rules relating
2 to the operation, maintenance, and use of preliminary drug or alcohol screening
3 devices for use by law enforcement officers in enforcing the provisions of this
4 title. The ~~commissioner~~ Commissioner shall consider relevant standards of the
5 National Highway Traffic Safety Administration in adopting such rules. Any
6 preliminary alcohol screening device authorized for use under this title shall be
7 on the qualified products list of the National Highway Traffic Safety
8 Administration.

9 * * *

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

11 § 1203a. INDEPENDENT CHEMICAL TEST; BLOOD TESTS

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

19 (b) Arrangements for a blood test shall be made by the person submitting to
20 the evidentiary ~~breath test~~ chemical analysis, by the person's attorney, or by
21 some other person acting on the person's behalf unless the person is detained

1 in custody after administration of the evidentiary test and upon completion of
2 processing, in which case the law enforcement officer having custody of the
3 person shall make arrangements for administration of the blood test upon
4 demand but at the person's own expense.

5 * * *

6 Sec. 6. EFFECTIVE DATE

7 This act shall take effect on passage.

8

9

10 (Committee vote: _____)

11

12

Representative _____

13

FOR THE COMMITTEE