

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Transportation to which was referred House Bill No.
3 237 entitled “An act relating to saliva testing” respectfully reports that it has
4 considered the same and recommends that the bill be amended by striking out
5 all after the enacting clause and inserting in lieu thereof the following:

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

7 § 1200. DEFINITIONS

8 As used in this subchapter:

9 * * *

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

13 * * *

14 (11) “Preliminary screening” means a breath or saliva test administered by
15 a law enforcement officer for the purpose of deciding whether an arrest should
16 be made and whether to request an evidentiary test. The results of a
17 preliminary screening shall not be introduced as evidence of impairment in any
18 court proceeding.

19

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

2 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF ALCOHOL
3 OR OTHER SUBSTANCE; CRIMINAL REFUSAL; ENHANCED
4 PENALTY FOR BAC OF 0.16 OR MORE

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

7 (1) when the person's alcohol concentration is:

8 (A) 0.08 or more; or

9 (B) 0.02 or more if the person is operating a school bus as defined in
10 subdivision 4(34) of this title; or

11 (C) 0.04 or more if the person is operating a commercial vehicle as
12 defined in subdivision 4103(4) of this title; or

13 (2) when the person is under the influence of alcohol; or

14 (3) when the person is under the influence of any other drug or under the
15 combined influence of alcohol and any other drug; ~~or~~

16 ~~(4) when the person's alcohol concentration is 0.04 or more if the person~~
17 ~~is operating a commercial motor vehicle as defined in subdivision 4103(4) of~~
18 ~~this title.~~

19 (b) A person who has previously been convicted of a violation of this
20 section shall not operate, attempt to operate, or be in actual physical control of
21 any vehicle on a highway and refuse a law enforcement officer's reasonable

1 request under the circumstances for an evidentiary test where the officer had
2 reasonable grounds to believe the person was in violation of subsection (a) of
3 this section.

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

10 * * *

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

12 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
13 ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

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

20 (2) Blood test. If breath testing equipment is not reasonably available or
21 if the officer has reason to believe that the person is unable to give a sufficient

1 sample of breath or saliva for testing or if the law enforcement officer has
2 reasonable grounds to believe that the person is under the influence of a drug
3 other than alcohol, the person is deemed to have given consent to the taking of
4 an evidentiary sample of blood. If in the officer's opinion the person is
5 incapable of decision or unconscious or dead, it is deemed that the person's
6 consent is given and a sample of blood shall be taken. A blood test sought
7 pursuant to this subdivision (2) shall be obtained pursuant to subsection (f) of
8 this section.

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

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

20 ~~(4)~~(5) Fatal collision or incident resulting in serious bodily injury. The
21 evidentiary test shall also be required if the person is the surviving operator of

1 a motor vehicle involved in a fatal incident or collision or an incident or
2 collision resulting in serious bodily injury and the law enforcement officer has
3 reasonable grounds to believe that the person has any amount of alcohol or
4 other drug in his or her system.

5 (b) A refusal to take a breath or saliva test may be introduced as evidence in
6 a criminal proceeding.

7 * * *

8 (f) If a blood test is sought from a person pursuant to subdivision (a)(2) of
9 this section, or if a person who has been involved in an accident or collision
10 resulting in serious bodily injury or death to another refuses an evidentiary test,
11 a law enforcement officer may apply for a search warrant pursuant to Rule 41
12 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an
13 evidentiary test. If a blood sample is obtained by search warrant, the fact of the
14 refusal may still be introduced in evidence, in addition to the results of the
15 evidentiary test. Once a law enforcement official begins the application process
16 for a search warrant, the law enforcement official is not obligated to
17 discontinue the process even if the person later agrees to provide an
18 evidentiary ~~breath~~ sample. The limitation created by Rule 41(g) of the
19 Vermont Rules of Criminal Procedure regarding blood specimens shall not
20 apply to search warrants authorized by this section.

1 (g) The Defender General shall provide statewide 24-hour coverage seven
2 days a week to assure that adequate legal services are available to persons
3 entitled to consult an attorney under this section.

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

5 § 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND
6 VIDEOTAPE

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

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

18 (c) When a breath test which is intended to be introduced in evidence is
19 taken with a crimper device or when blood or saliva is withdrawn at an
20 officer's request, a sufficient amount of ~~breath~~ saliva or blood, as the case may
21 be, shall be taken to enable the person to have made an independent analysis of

1 the sample, and shall be held for at least 45 days from the date the sample was
2 taken. At any time during that period the person may direct that the sample be
3 sent to an independent laboratory of the person's choosing for an independent
4 analysis. The Department of Public Safety shall adopt rules providing for the
5 security of the sample. At no time shall the defendant or any agent of the
6 defendant have access to the sample. A preserved sample of breath shall not be
7 required when an infrared breath-testing instrument is used. A person tested
8 with an infrared breath-testing instrument shall have the option of having a
9 second infrared test administered immediately after receiving the results of the
10 first test.

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

1 method or methods. Failure of a person to provide an adequate breath or saliva
2 sample constitutes a refusal.

3 (e) [Repealed.]

4 (f) When a law enforcement officer has reason to believe that a person may
5 be violating or has violated section 1201 of this title, the officer may request
6 the person to provide a sample of breath or saliva for a preliminary screening
7 test using a device approved by the Commissioner of Public Safety for this
8 purpose. The person shall not have the right to consult an attorney prior to
9 submitting to this preliminary ~~breath-alcohol~~ screening test. The results of this
10 preliminary screening test may be used for the purpose of deciding whether an
11 arrest should be made and whether to request an evidentiary test and shall not
12 be used in any court proceeding except on those issues. Following the
13 screening, ~~test~~ additional tests may be required of the operator pursuant to the
14 provisions of section 1202 of this title.

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

19 (h) A Vermont law enforcement officer shall have a right to request a
20 breath, saliva or blood sample in an adjoining state or country under this
21 section unless prohibited by the law of the other state or country. If the law in

1 an adjoining state or country does not prohibit an officer acting under this
2 section from taking a breath, saliva, or blood sample in its jurisdiction,
3 evidence of such sample shall not be excluded in the courts of this State solely
4 on the basis that the test was taken outside the State.

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

13 * * *

14 Sec. 5. 23 V.S.A. § 1203a(b) is amended to read:

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

1 Sec. 6. 23 V.S.A. § 1204 is amended to read:

2 § 1204. PERMISSIVE INFERENCES

3 (a) Upon the trial of any civil or criminal action or proceeding arising out of
4 acts alleged to have been committed by a person while operating, attempting to
5 operate, or in actual physical control of a vehicle on a highway, the person's
6 alcohol concentration shall give rise to the following permissive inferences:

7 (1) If the person's alcohol concentration at that time was less than 0.08,
8 such fact shall not give rise to any presumption or permissive inference that the
9 person was or was not under the influence of alcohol, but such fact may be
10 considered with other competent evidence in determining whether the person
11 was under the influence of alcohol.

12 (2) If the person's alcohol concentration at that time was 0.08 or more, it
13 shall be a permissive inference that the person was under the influence of
14 alcohol in violation of subdivision 1201(a)(2) or (3) of this title.

15 (3) If the person's alcohol concentration at any time within two hours of
16 the alleged offense was 0.10 or more, it shall be a permissive inference that the
17 person was under the influence of alcohol in violation of subdivision
18 1201(a)(2) or (3) of this title.

19 (b) The foregoing provisions shall not be construed as limiting the
20 introduction of any other competent evidence bearing upon the question
21 whether the person was under the influence of alcohol or under the combined

1 influence of alcohol and another drug, nor shall they be construed as requiring
2 that evidence of the amount of alcohol or drug in the person's blood, breath,
3 urine, or saliva must be presented.

4 Sec. 7. EFFECTIVE DATE

5 This act shall take effect on July 1, 2018.

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11 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE