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S.97

Introduced by Senator Sears

Referred to Committee on

Date:

Subject: Court procedure; criminal procedure; miscellaneous amendments

Statement of purpose of bill as introduced: This bill proposes to make a number of miscellaneous amendments related to civil and criminal procedure statutes.

An act relating to miscellaneous judiciary procedures

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

* * * Sunset Repeals and Extension * * *

Sec. 1. SUNSET REPEAL; COURT DIVERSION PROGRAM CHANGES

2017 Acts and Resolves No. 61, Sec. 7, as amended by 2020 Acts and Resolves No. 134, Sec. 1 (July 1, 2020 repeal of changes to the court diversion program), is repealed.

Sec. 2. SUNSET REPEAL; RACIAL DISPARITIES IN THE CRIMINAL

AND JUVENILE JUSTICE SYSEMS ADVISORY PANEL

2017 Acts and Resolves No. 54, Sec. 6a, as amended by 2020 Acts and Resolves No. 134, Sec. 2 (July 1, 2020 repeal of 3 V.S.A. § 168, Racial

1 Disparities in the Criminal and Juvenile Justice System Advisory Panel), is
2 repealed.

3 Sec. 3. SUNSET REPEAL; SPOUSAL MAINTENANCE AND SUPPORT
4 GUIDELINES

5 2017 Acts and Resolves No. 60, Sec. 3, as amended by 2018 Acts and
6 Resolves No. 203, Sec. 1 (July 1, 2021 repeal of spousal maintenance and
7 support guidelines), is repealed.

8 Sec. 4. SUNSET EXTENSION; VERMONT SENTENCING COMMISSION

9 2017 Acts and Resolves No. 142, Sec. 5, is amended to read:

10 Sec. 5. REPEAL

11 13 V.S.A. §§ 5451 (creation of Vermont Sentencing Commission) and 5452
12 (creation of Vermont Sentencing Commission) shall be repealed on July 1,
13 ~~2024~~ 2023.

14 * * * Repeals * * *

15 Sec. 5. 13 V.S.A. § 2579 is amended to read:

16 § 2579. ~~CIVIL RECOVERY FOR RETAIL THEFT~~

17 ~~(a) Any person over the age of 16 years or any emancipated minor who~~
18 ~~commits the offense of retail theft against a retail mercantile establishment in~~
19 ~~violation of section 2575 of this title shall be civilly liable to the retail~~
20 ~~mercantile establishment in an amount consisting of:~~

1 ~~(1) damages equal to the retail price of the merchandise if the item is not~~
2 ~~returned in a merchantable condition; and~~

3 ~~(2) a civil penalty of two times the retail price of the merchandise, to be~~
4 ~~not less than \$25.00 and not more than \$300.00.~~

5 ~~(b) The fact that an action may be brought against an individual as provided~~
6 ~~in this section shall not limit the right of a retail mercantile establishment to~~
7 ~~demand, in writing, that a person who is liable for damages and penalties under~~
8 ~~this section remit the damages and penalties prior to the commencement of any~~
9 ~~legal action.~~

10 ~~(c) If the person to whom a demand is made complies with the demand, that~~
11 ~~person shall incur no further civil liability for that specific act of retail theft.~~

12 ~~(d) Any demand made under this section shall be accompanied by a copy of~~
13 ~~this law.~~

14 ~~(e) A criminal prosecution under section 2575 of this title is not a~~
15 ~~prerequisite to the applicability of this section and such a criminal prosecution~~
16 ~~shall not bar an action under this section. An action under this section shall not~~
17 ~~bar a criminal prosecution under section 2575 of this title.~~

18 ~~(f) The provisions of this section shall not be construed to prohibit or limit~~
19 ~~any other cause of action that a retail mercantile establishment may have~~
20 ~~against a person who unlawfully takes merchandise from a retail mercantile~~
21 ~~establishment, except as provided in subsection (c) of this section.~~

1 ~~(g) Any testimony or statements by the defendant or any evidence derived~~
2 ~~from an attempt to reach a civil settlement or from a civil proceeding brought~~
3 ~~under this section shall be inadmissible in any other court proceeding relating~~
4 ~~to such retail theft.~~

5 ~~(h) If a retail mercantile establishment files suit to recover damages and~~
6 ~~penalties pursuant to subsection (a) of this section and the mercantile~~
7 ~~establishment fails to appear at a hearing in such proceedings without excuse~~
8 ~~from the court, the court shall dismiss the suit with prejudice and award costs~~
9 ~~to the defendant.~~

10 ~~(i) A person who knowingly uses the provisions of this section to demand or~~
11 ~~extract money from a person who is not legally obligated to pay a penalty shall~~
12 ~~be imprisoned not more than one year or fined not more than \$1,000.00, or~~
13 ~~both. [Repealed.]~~

14 Sec. 6. 20 V.S.A. § 187 is amended to read:

15 § 187. ~~SPECIAL EMERGENCY JUDGES~~

16 ~~In the event that any district judge is unavailable to exercise the powers and~~
17 ~~discharge the duties of his or her office, the duties of the office shall be~~
18 ~~discharged and the powers exercised by one of three special emergency judges~~
19 ~~residing in the district served by such judge, and designated by him or her~~
20 ~~within 60 days after the approval of this chapter, and thereafter immediately~~
21 ~~after the date that he or she shall have been appointed and qualified as such.~~

1 ~~Such special emergency judges shall, in the order specified, exercise the~~
2 ~~powers and discharge the duties of such office in case of the unavailability of~~
3 ~~the regular judge or persons immediately preceding them in the designation.~~
4 ~~The designating authority shall, each year, review and shall revise, as~~
5 ~~necessary, designations made pursuant to this chapter to insure their current~~
6 ~~status. Forthwith after such designations are made and after a revision thereof~~
7 ~~copies shall be filed in the offices of the governor and the county clerk. Said~~
8 ~~emergency special judges shall discharge the duties and exercise the powers of~~
9 ~~such office until such time as a vacancy which may exist shall be filled in~~
10 ~~accordance with the constitution and statutes or until the regular judge or one~~
11 ~~preceding the designee in the order of designation becomes available to~~
12 ~~exercise the powers and discharge the duties of his or her office. While~~
13 ~~exercising the powers and discharging the duties of the office of a district~~
14 ~~judge a special emergency judge shall receive the pro rata salary and~~
15 ~~perquisites thereof. [Repealed.]~~

16 * * * Probate Fees * * *

17 * * *

18 Sec. 7. 14 V.S.A. § 1492 is amended to read:

19 § 1492. ACTION FOR DEATH FROM WRONGFUL ACT; PROCEDURE;

20 DAMAGES

1 (a) The action shall be brought in the name of the personal representative of
2 the deceased person and commenced within two years from the discovery of
3 the death of the person, but if the person against whom the action accrues is
4 out of the State, the action may be commenced within two years after the
5 person comes into the State. After the cause of action accrues and before the
6 two years have run, if the person against whom it accrues is absent from and
7 resides out of the State and has no known property within the State that can by
8 common process of law be attached, the time of his or her absence shall not be
9 taken as part of the time limited for the commencement of the action. If the
10 death of the decedent occurred under circumstances such that probable cause is
11 found to charge a person with homicide, the action shall be commenced within
12 seven years after the discovery of the death of the decedent or not more than
13 two years after the judgment in that criminal action has become final,
14 whichever occurs later.

15 * * *

16 (f) The fee for the appointment of a personal representative to bring an
17 action pursuant to subsection(a) of this section shall be the entry fee
18 established by 32 V.S.A. § 1434(a)(1).

1 Sec. 8. 32 V.S.A. § 1434 is amended to read:

2 § 1434. PROBATE CASES

3 (a) The following entry fees shall be paid to the Probate Division of the
4 Superior Court for the benefit of the State, except for subdivisions (18) and
5 (19) of this subsection, which shall be for the benefit of the county in which
6 the fee was collected:

7 (1) Estates of \$10,000.00 or less \$50.00

8 * * *

9 (34) Registration of foreign guardianship order \$90.00

10 * * *

11 * * * Judicial Bureau; Agricultural Product Identification

12 Labels Misuse * * *

13 Sec. 9. 4 V.S.A. § 1102 is amended to read:

14 § 1102. JUDICIAL BUREAU; JURISDICTION

15 (a) The Judicial Bureau is created within the Judicial Branch under the
16 supervision of the Supreme Court.

17 (b) The Judicial Bureau shall have jurisdiction of the following matters:

18 * * *

19 (7) Violations of 16 V.S.A. chapter ~~1~~ 9, subchapter ~~9~~ 5, relating to
20 hazing.

21 * * *

1 (19) ~~Violations of 6 V.S.A. § 2965, relating to the misuse of~~
2 ~~identification labels for agricultural products produced in Vermont and~~
3 ~~meeting standards of quality established by the Secretary of Agriculture, Food~~
4 ~~and Markets. [Repealed.]~~

5 * * *

6 * * * Roadside Safety Technical Correction * * *

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

8 § 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND
9 VIDEOTAPE

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

15 (b)(1) Only a physician, licensed nurse, medical technician, physician
16 assistant, medical technologist, laboratory assistant, intermediate or advanced
17 emergency medical technician, or paramedic acting at the request of a law
18 enforcement officer may, at a medical facility, police or fire department, or
19 other safe and clean location as determined by the individual withdrawing
20 blood, withdraw blood for the purpose of determining the presence of alcohol
21 or another drug. ~~A~~ Any withdrawal of blood shall not be taken at roadside, and

1 a law enforcement officer, even if trained to withdraw blood, acting in that
2 official capacity may not withdraw blood for the purpose of determining the
3 presence of alcohol or another drug. These limitations do not apply to the
4 taking of a breath sample. A medical facility or business may not charge more
5 than \$75.00 for services rendered when an individual is brought to a facility for
6 the sole purpose of an evidentiary blood sample or when an emergency
7 medical technician or paramedic draws an evidentiary blood sample.

8 (2) A saliva sample may be obtained by a person authorized by the
9 Vermont Criminal Justice Council to collect a saliva sample for the purpose of
10 evidentiary testing to determine the presence of a drug. Any saliva sample
11 obtained pursuant to this section shall not be taken at roadside.

12 (c) ~~When a breath test that is intended to be introduced in evidence is taken~~
13 ~~with a crimper device or when~~ blood or saliva is withdrawn at an officer's
14 request, a sufficient amount of ~~breath~~ saliva or blood, as the case may be, shall
15 be taken to enable the person to have made an independent analysis of the
16 sample and shall be held for at least 45 days from the date the sample was
17 taken. At any time during that period, the person may direct that the sample be
18 sent to an independent laboratory of the person's choosing for an independent
19 analysis. The Department of Public Safety shall adopt rules providing for the
20 security of the sample. At no time shall the defendant or any agent of the
21 defendant have access to the sample. A preserved sample of breath shall not

1 be required when an infrared breath-testing instrument is used. A person tested
2 with an infrared breath-testing instrument shall have the option of having a
3 second infrared test administered immediately after receiving the results of the
4 first test.

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

18 (e) [Repealed.]

19 (f) When a law enforcement officer has reason to believe that a person may
20 be violating or has violated section 1201 of this title, the officer may request
21 the person to provide a sample of breath for a preliminary screening test using

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

9 * * *

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

17 * * *

18 Sec. 11. REPEAL

19 2020 Acts and Resolves No. 164, Sec. 24 (administration of tests; 23 V.S.A.
20 § 1203) is repealed.

1 Sec. 12. 2020 Acts and Resolves No. 164, Sec. 33(c) is amended to read:

2 (c) Secs. 10 (implementation of Medical Cannabis Registry),
3 13 (implementation of medical cannabis dispensaries), 18 (income tax
4 deduction), 18c (legislative intent), 21 (definition of evidentiary test),
5 22 (operating vehicle under the influence of alcohol or other substance),
6 23 (consent to taking of tests to determine blood alcohol content or presence of
7 other drug), ~~24 (administration of tests)~~, and 25 (independent testing of
8 evidentiary sample) shall take effect January 1, 2022.

9 Sec. 13. EFFECTIVE DATES

10 This act shall take effect on passage, except that Sec. 10 shall take effect on
11 January 1, 2022.