

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 97
3 entitled “An act relating to miscellaneous judiciary procedures” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

7 * * * Sunset Repeals and Extension * * *

8 Sec. 1. SUNSET REPEAL; COURT DIVERSION PROGRAM CHANGES

9 2017 Acts and Resolves No. 61, Sec. 7, as amended by 2020 Acts and
10 Resolves No. 134, Sec. 1 (July 1, 2020 repeal of changes to the court diversion
11 program), is repealed.

12 Sec. 2. SUNSET REPEAL; RACIAL DISPARITIES IN THE CRIMINAL
13 AND JUVENILE JUSTICE SYSEMS ADVISORY PANEL

14 2017 Acts and Resolves No. 54, Sec. 6a, as amended by 2020 Acts and
15 Resolves No. 134, Sec. 2 (July 1, 2020 repeal of 3 V.S.A. § 168, Racial
16 Disparities in the Criminal and Juvenile Justice System Advisory Panel), is
17 repealed.

18 Sec. 3. SUNSET REPEAL; SPOUSAL MAINTENANCE AND SUPPORT
19 GUIDELINES

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

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

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

10 ~~(e) A criminal prosecution under section 2575 of this title is not a~~
11 ~~prerequisite to the applicability of this section and such a criminal prosecution~~
12 ~~shall not bar an action under this section. An action under this section shall not~~
13 ~~bar a criminal prosecution under section 2575 of this title.~~

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

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

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

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

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

11 § 187. ~~SPECIAL EMERGENCY JUDGES~~

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

18 ~~Such special emergency judges shall, in the order specified, exercise the~~
19 ~~powers and discharge the duties of such office in case of the unavailability of~~
20 ~~the regular judge or persons immediately preceding them in the designation.~~

21 ~~The designating authority shall, each year, review and shall revise, as~~

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

12 * * * Probate Fees * * *

13 * * *

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

15 § 1492. ACTION FOR DEATH FROM WRONGFUL ACT; PROCEDURE;

16 DAMAGES

17 (a) The action shall be brought in the name of the personal representative of
18 the deceased person and commenced within two years from the discovery of
19 the death of the person, but if the person against whom the action accrues is
20 out of the State, the action may be commenced within two years after the
21 person comes into the State. After the cause of action accrues and before the

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

10 * * *

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

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

15 § 1434. PROBATE CASES

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

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

21 * * *

1 VIDEOTAPE

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

7 (b)(1) Only a physician, licensed nurse, medical technician, physician
8 assistant, medical technologist, laboratory assistant, intermediate or advanced
9 emergency medical technician, or paramedic acting at the request of a law
10 enforcement officer may, at a medical facility, police or fire department, or
11 other safe and clean location as determined by the individual withdrawing
12 blood, withdraw blood for the purpose of determining the presence of alcohol
13 or another drug. ~~A~~ Any withdrawal of blood shall not be taken at roadside, and
14 a law enforcement officer, even if trained to withdraw blood, acting in that
15 official capacity may not withdraw blood for the purpose of determining the
16 presence of alcohol or another drug. These limitations do not apply to the
17 taking of a breath sample. A medical facility or business may not charge more
18 than \$75.00 for services rendered when an individual is brought to a facility for
19 the sole purpose of an evidentiary blood sample or when an emergency
20 medical technician or paramedic draws an evidentiary blood sample.

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

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

19 (d) In the case of a breath, saliva, or blood test ~~administered using an~~
20 ~~infrared breath testing instrument~~, the test shall be analyzed in compliance with
21 rules adopted by the Department of Public Safety. The analyses shall be

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

11 (e) [Repealed.]

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

1 ~~test~~ additional tests may be required of the operator pursuant to the provisions
2 of section 1202 of this title.

3 * * *

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

11 * * *

12 Sec. 11. REPEAL

13 2020 Acts and Resolves No. 164, Sec. 24 (administration of tests; 23 V.S.A.
14 § 1203) is repealed.

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

16 (c) Secs. 10 (implementation of Medical Cannabis Registry),
17 13 (implementation of medical cannabis dispensaries), 18 (income tax
18 deduction), 18c (legislative intent), 21 (definition of evidentiary test),
19 22 (operating vehicle under the influence of alcohol or other substance),
20 23 (consent to taking of tests to determine blood alcohol content or presence of

1 other drug), ~~24 (administration of tests)~~, and 25 (independent testing of
2 evidentiary sample) shall take effect January 1, 2022.

3 Sec. 13. EFFECTIVE DATES

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

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13 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE