

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 44
3 entitled “An act relating to miscellaneous amendments to the laws governing
4 impaired driving” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 4 V.S.A. § 33 is amended to read:

8 § 33. JURISDICTION; FAMILY DIVISION

9 (a) Notwithstanding any other provision of law to the contrary, the Family
10 Division shall have exclusive jurisdiction to hear and dispose of the following
11 proceedings filed or pending on or after October 1, 1990:

12 * * *

13 (8) All ~~juvenile~~ proceedings filed pursuant to 33 V.S.A. chapters 51, 52,
14 52A, and 53, including proceedings involving “youthful offenders” pursuant to
15 33 V.S.A. § 5281 whether the matter originated in the Criminal or Family
16 Division of the Superior Court, except for a proceeding charging the holder of
17 a commercial driver’s license or commercial learner’s permit as defined in 23
18 V.S.A. § 4103 with an offense or violation listed in 23 V.S.A. § 4116 that
19 would result in the license holder being disqualified from driving a commercial
20 motor vehicle if convicted or operating a commercial motor vehicle with any

1 offense or violation of any traffic control law other than parking, vehicle
2 weight, or vehicle defect violations.

3 * * *

4 (b) The Family Division of the Superior Court has jurisdiction to hear and
5 dispose of proceedings involving ~~misdemeanor~~ motor vehicle offenses filed ~~or~~
6 ~~pending on or after July 1, 2016~~, pursuant to 33 V.S.A. §§ 5201, 5203, and
7 5280, and 5281. The Family Division of the Superior Court shall forward a
8 record of any conviction or adjudication for violation of a law related to motor
9 vehicle traffic control, other than a parking violation, to the Commissioner of
10 Motor Vehicles pursuant to 23 V.S.A. § 1709. As used in this subsection,
11 “conviction” has the same meaning as in 23 V.S.A. § 4(60).

12 Sec. 2. 23 V.S.A. chapter 13, subchapter 13 is amended to read:

13 Subchapter 13. Drunken Driving

14 § 1200. DEFINITIONS

15 As used in this subchapter:

16 * * *

17 (11) “Serious bodily injury” has the same meaning as in 13 V.S.A.
18 § 1021(a)(2)(A).

19 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF

20 ALCOHOL OR OTHER SUBSTANCE; CRIMINAL REFUSAL;

21 ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

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

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

4 (A) 0.08 or more; or

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

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

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

10 (3) when the person is under the influence of any other drug or under the
11 combined influence of alcohol and any other drug.

12 (b) A person who has previously been convicted of a violation of this
13 section shall not operate, attempt to operate, or be in actual physical control of
14 any vehicle on a highway and refuse a law enforcement officer's reasonable
15 request under the circumstances for an evidentiary test where the officer had
16 reasonable grounds to believe the person was in violation of subsection (a) of
17 this section.

18 (c) A person shall not operate, attempt to operate, or be in actual physical
19 control of any vehicle on a highway and be involved in a crash or collision
20 resulting in serious bodily injury or death to another and refuse a law
21 enforcement officer's reasonable request under the circumstances for an

1 evidentiary test where the officer has reasonable grounds to believe the person
2 has any amount of alcohol or drugs in ~~his or her~~ the person's system.

3 (d)(1) A person who is convicted of a second or subsequent violation of
4 subsection (a), (b), or (c) of this section when the person's alcohol
5 concentration is proven to be 0.16 or more shall not, for three years from the
6 date of the conviction for which the person's alcohol concentration is 0.16 or
7 more, operate, attempt to operate, or be in actual physical control of any
8 vehicle on a highway when the person's alcohol concentration is 0.02 or more.
9 The prohibition imposed by this subsection shall be in addition to any other
10 penalties imposed by law.

11 (2) A person shall not operate, attempt to operate, or be in actual
12 physical control of any vehicle on a highway when the person's alcohol
13 concentration is 0.02 or more if the person has previously been convicted of a
14 second or subsequent violation of subsection (a), (b), or (c) of this section
15 within the preceding three years and the person's alcohol concentration for the
16 second or subsequent violation was proven to be 0.16 or greater. A violation
17 of this subsection shall be considered a third or subsequent violation of this
18 section and shall be subject to the penalties of subsection 1210(d) of this title.

19 (e) The fact that a person charged with a violation of this section is or has
20 been entitled to use a drug under the laws of this State shall not constitute a
21 defense against any charge of violating this section.

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

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

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

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

9 (h) As used in subdivision (a)(3) of this section, “under the influence of a
10 drug” means that a person’s ability to operate a motor vehicle safely is
11 diminished or impaired in the slightest degree. This subsection shall not be
12 construed to affect the meaning of the term “under the influence of alcohol.”

13 (i) Evidence of the results of a standardized field sobriety test conducted by
14 a law enforcement officer trained in Advanced Roadside Impaired Driving
15 Enforcement or a certified Drug Recognition Expert’s systematic evaluation of
16 observable signs and symptoms of a person charged with a violation of this
17 section shall be presumptively admissible at trial to demonstrate whether or not
18 the person was operating under the influence in violation of this section.

19 (j) A person suspected of violating this section shall not refuse to submit to
20 the collection of an evidentiary blood sample when a warrant for that person’s
21 blood is issued pursuant to subdivision 1202(f)(1) of this title. This subsection

1 shall not be construed as impairing a person’s right to challenge the validity of
2 a search warrant in any subsequent legal proceedings.

3 * * *

4 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
5 ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

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

12 (2) Blood test. If breath testing equipment is not reasonably available or
13 if the officer has reason to believe that the person is unable to give a sufficient
14 sample of breath for testing or if the law enforcement officer has reasonable
15 grounds to believe that the person is under the influence of a drug other than
16 alcohol, the person is deemed to have given consent to the taking of an
17 evidentiary sample of blood. If in the officer’s opinion the person is incapable
18 of decision or unconscious or dead, it is deemed that the person’s consent is
19 given and a sample of blood shall be taken. A blood test sought pursuant to
20 this subdivision shall be obtained pursuant to subsection (f) of this section.

1 (1) Vermont law authorizes a law enforcement officer to request a test to
2 determine whether the person is under the influence of alcohol or other drug.

3 (2) If the officer’s request is reasonable and testing is refused, the
4 person’s license or privilege to operate will be suspended for at least six
5 months.

6 (3) If a test is taken and the results indicate that the person is under the
7 influence of alcohol or other drug, the person will be subject to criminal
8 charges and the person’s license or privilege to operate will be suspended for at
9 least 90 days.

10 (4) A person who is requested by a law enforcement officer to submit to
11 an evidentiary test or tests has the limited right to consult an attorney before
12 deciding whether or not to submit to such a test or tests. The person must
13 decide whether or not to submit to the evidentiary test or tests within a
14 reasonable time and not later than 30 minutes from the time of the initial
15 attempt to contact the attorney, regardless of whether a consultation took place.
16 The person also has the right to have additional tests made by someone of the
17 person’s own choosing at the person’s own expense. The person shall also be
18 informed of the location of one or more facilities available for drawing blood.

19 (5) A person who is requested by a law enforcement officer to submit to
20 an evidentiary test administered with an infrared breath-testing instrument may

1 elect to have a second infrared test administered immediately after receiving
2 the results of the first test.

3 (6) If the person refuses to take an evidentiary test, the refusal may be
4 offered into evidence against the person at trial, whether or not a search
5 warrant is sought. The person may be charged with the crime of criminal
6 refusal if the person:

7 (A) has previously been convicted of a violation of section 1201 of
8 this title; ~~or~~

9 (B) is involved in a crash or collision resulting in serious bodily
10 injury or death to another, in which case the court may issue a search warrant
11 and order the person to submit to a blood test, the results of which may be
12 offered into evidence against the person at trial; or

13 (C) ~~obstructs~~ knowingly hinders the collection of an evidentiary
14 blood sample when a warrant for that person's blood is issued pursuant to
15 subdivision (f)(1) of this section.

16 (e) In any proceeding under this subchapter, a law enforcement officer's
17 testimony that ~~he or she~~ the officer is certified pursuant to section 20 V.S.A.
18 § 2358 shall be prima facie evidence of that fact.

19 (f)(1) If a blood test is sought from a person pursuant to subdivision (a)(2)
20 of this section, or if a person who has been involved in a crash or collision
21 resulting in serious bodily injury or death to another refuses an evidentiary test,

1 a law enforcement officer may apply for a search warrant pursuant to Rule 41
2 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an
3 evidentiary test. Pursuant to subdivision (d)(6) of this section, if a blood
4 sample is obtained by search warrant, the fact of the refusal may still be
5 introduced in evidence, in addition to the results of the evidentiary test. Once a
6 law enforcement official begins the application process for a search warrant,
7 the law enforcement official is not obligated to discontinue the process even if
8 the person later agrees to provide an evidentiary sample. The limitation
9 created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding
10 blood specimens shall not apply to search warrants authorized by this section.

11 (2) If an evidentiary saliva test is sought from a person pursuant to
12 subdivision (a)(3) of this section, a law enforcement officer may apply for a
13 search warrant pursuant to Rule 41 of the Vermont Rules of Criminal
14 Procedure to obtain a sample of saliva for the evidentiary test. Pursuant to
15 subdivision (d)(6) of this section, if a saliva sample is obtained by search
16 warrant, the fact of the refusal may still be introduced in evidence, in addition
17 to the results of the evidentiary test.

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

21 * * *

1 § 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

2 (a) Refusal; alcohol concentration at or above legal limits; suspension
3 periods.

4 * * *

5 (2) Upon affidavit of a law enforcement officer that the officer had
6 reasonable grounds to believe that the person was operating, attempting to
7 operate, or in actual physical control of a vehicle in violation of section 1201
8 of this title and that the person submitted to a test and the test results indicated
9 that the person's alcohol concentration was at or above a limit specified in
10 subsection 1201(a) of this title, at the time of operating, attempting to operate,
11 or being in actual physical control, the Commissioner shall suspend the
12 person's operating license or nonresident operating privilege or the privilege of
13 an unlicensed operator to operate a vehicle for a period of 90 days and until the
14 person complies with section 1209a of this title. However, during the
15 suspension, an eligible person may operate under the terms of an ignition
16 interlock RDL or ignition interlock certificate issued pursuant to section 1213
17 of this title.

18 * * *

19 (b) Form of officer's affidavit. A law enforcement officer's affidavit in
20 support of a suspension under this section shall be in a standardized form for

1 use throughout the State and shall be sufficient if it contains the following
2 statements:

3 (1) The officer is a certified law enforcement officer.

4 (2) The officer who administered the test was certified to operate the
5 testing equipment.

6 (3) The officer had reasonable grounds to believe the person was
7 operating, attempting to operate, or in actual physical control of a vehicle in
8 violation of section 1201 of this title (noting the time and date of operating,
9 attempting to operate, or being in actual physical control).

10 (4) The officer informed the person of ~~his or her~~ the person's rights
11 under subsection 1202(d) of this title.

12 (5) The officer obtained an evidentiary test (noting the time and date the
13 test was taken) and the test indicated that the person's alcohol concentration
14 was at or above a legal limit specified in subsection 1201(a) or (d) of this title,
15 or the person refused to submit to an evidentiary test.

16 (6) The officer complied with the Servicemembers Civil Relief Act,
17 codified at 50 U.S.C. chapter 50.

18 (7) The officer confirmed the person's correct mailing address.

19 (c) Notice of suspension. On behalf of the Commissioner of Motor
20 Vehicles, a law enforcement officer requesting or directing the administration
21 of an evidentiary test shall serve notice of intention to suspend and of

1 suspension on a person who refuses to submit to an evidentiary test or on a
2 person who submits to a test the results of which indicate that the person's
3 alcohol concentration was at or above a legal limit specified in subsection
4 1201(a) or (d) of this title, at the time of operating, attempting to operate, or
5 being in actual physical control of a vehicle in violation of section 1201 of this
6 title. The notice shall be signed by the law enforcement officer requesting the
7 test. A copy of the notice shall be sent to the Commissioner of Motor
8 Vehicles, and a copy shall be mailed or given to the defendant within three
9 business days after the date the officer receives the results of the test. If
10 mailed, the notice is deemed received three days after mailing to the address
11 provided by the defendant to the law enforcement officer. A copy of the
12 affidavit of the law enforcement officer shall also be mailed by first-class mail
13 or given to the defendant and the Commissioner of Motor Vehicles within
14 seven days after the date of notice.

15 * * *

16 (f) Review by Superior Court. Within seven days following receipt of a
17 notice of intention to suspend and of suspension, a person may make a request
18 for a hearing before the Superior Court by mailing or delivering the form
19 provided with the notice. The request shall be mailed or delivered to the
20 Commissioner of Motor Vehicles, who shall then notify the Criminal Division
21 of the Superior Court that a hearing has been requested and provide the

1 Criminal Division and the State's Attorney with a copy of the notice of
2 intention to suspend and of suspension and the officer's affidavit.

3 * * *

4 (h) Final hearing.

5 (1) If the defendant requests a hearing on the merits, the court shall
6 schedule a final hearing on the merits to be held within 21 days after the date
7 of the preliminary hearing. In no event may a final hearing occur more than 42
8 days after the date of the alleged offense without the consent of the defendant
9 or for good cause shown. The final hearing may only be continued by the
10 consent of the defendant or for good cause shown. The issues at the final
11 hearing shall be limited to the following:

12 (A) Whether the law enforcement officer had reasonable grounds to
13 believe the person was operating, attempting to operate, or in actual physical
14 control of a vehicle in violation of section 1201 of this title.

15 (B) Whether at the time of the request for the evidentiary test the
16 officer informed the person of the person's rights and the consequences of
17 taking and refusing the test substantially as set out in subsection 1202(d) of
18 this title.

19 (C) Whether the person refused to permit the test.

20 (D) Whether the test was taken and the test results indicated that the
21 person's alcohol concentration was at or above a legal limit specified in

1 subsection 1201(a) or (d) of this title, at the time of operating, attempting to
2 operate, or being in actual physical control of a vehicle in violation of section
3 1201 of this title, whether the testing methods used were valid and reliable, and
4 whether the test results were accurate and accurately evaluated. Evidence that
5 the test was taken and evaluated in compliance with rules adopted by the
6 Department of Public Safety shall be prima facie evidence that the testing
7 methods used were valid and reliable and that the test results are accurate and
8 were accurately evaluated.

9 (E) Whether the requirements of section 1202 of this title were
10 complied with.

11 (2) No less than seven days before the final hearing, and subject to the
12 requirements of Vermont Rule of Civil Procedure 11, the defendant shall
13 provide to the State and file with the court a list of the issues (limited to the
14 issues set forth in this subsection) that the defendant intends to raise. Only
15 evidence that is relevant to an issue listed by the defendant may be raised by
16 the defendant at the final hearing. The defendant shall not be permitted to raise
17 any other evidence at the final hearing, and all other evidence shall be
18 inadmissible.

19 (i) Finding by the court. The court shall electronically forward a report of
20 the hearing to the Commissioner. Upon a finding by the court that the law
21 enforcement officer had reasonable grounds to believe that the person was

1 operating, attempting to operate, or in actual physical control of a vehicle in
2 violation of section 1201 of this title and that the person refused to submit to a
3 test, or upon a finding by the court that the law enforcement officer had
4 reasonable grounds to believe that the person was operating, attempting to
5 operate, or in actual physical control of a vehicle in violation of section 1201
6 of this title and that the person submitted to a test and the test results indicated
7 that the person’s alcohol concentration was at or above a legal limit specified
8 in subsection 1201(a) or (d) of this title, at the time the person was operating,
9 attempting to operate, or in actual physical control, the person’s operating
10 license, or nonresident operating privilege, or the privilege of an unlicensed
11 operator to operate a vehicle shall be suspended or shall remain suspended for
12 the required term and until the person complies with section 1209a of this title.
13 Upon a finding in favor of the person, the Commissioner shall cause the
14 suspension to be canceled and removed from the record, without payment of
15 any fee.

16 * * *

17 (n) Presumption. In a proceeding under this section, if at any time within
18 two hours of operating, attempting to operate, or being in actual physical
19 control of a vehicle a person had an alcohol concentration ~~of~~ at or above a legal
20 limit specified in subsection 1201(a) or (d) of this title, it shall be a rebuttable
21 presumption that the person’s alcohol concentration was above the applicable

1 limit at the time of operating, attempting to operate, or being in actual physical
2 control.

3 * * *

4 § 1210. PENALTIES

5 * * *

6 (f) Death resulting.

7 (1) If the death of any person results from a violation of section 1201 of
8 this title, the person convicted of the violation shall be fined not more than
9 \$10,000.00 or imprisoned not less than one year nor more than 15 years, or
10 both. The provisions of this subsection do not limit or restrict prosecutions for
11 manslaughter.

12 (2) If the death or serious bodily injury of more than one person results
13 from a violation of section 1201 of this title, the operator may be convicted of
14 a separate violation of this subdivision for each decedent or person injured.

15 (3)(A) If the death of any person results from a violation of section 1201
16 of this title and the person convicted of the violation previously has been
17 convicted two or more times of a violation of that section, a sentence ordered
18 pursuant to this subsection shall, except as provided in subdivision (B) of this
19 subdivision (3), include at least a five-year term of imprisonment. The five-
20 year minimum term of imprisonment required by this subdivision (3)(A) shall
21 be served and may not be suspended, deferred, or served as a supervised

1 sentence. The defendant shall not be eligible for probation, parole, furlough,
2 or any other type of early release until the expiration of the five-year term of
3 imprisonment.

4 (B) Notwithstanding subdivision (A) of this subdivision (3), if the
5 death or serious bodily injury of any person results from a violation of section
6 1201 of this title and the person convicted of the violation previously has been
7 convicted two or more times of a violation of that section, the court may
8 impose a sentence that does not include a term of imprisonment or that
9 includes a term of imprisonment of less than five years if the court makes
10 written findings on the record that such a sentence will serve the interests of
11 justice and public safety.

12 (g) Injury resulting.

13 (1) If serious bodily injury, ~~as defined in 13 V.S.A. § 1021(2)~~, results to
14 any person other than the operator from a violation of section 1201 of this title,
15 the person convicted of the violation shall be fined not more than \$5,000.00 or
16 imprisoned not more than 15 years, or both.

17 (2) If serious bodily injury ~~as defined in 13 V.S.A. § 1021(2)~~ or death
18 results to more than one person other than the operator from a violation of
19 section 1201 of this title, the operator may be convicted of a separate violation
20 of this subdivision for each person injured or decedent.

1 Sec. 3. 33 V.S.A. § 5202 is amended to read:

2 § 5202. ORDER OF ADJUDICATION; NONCRIMINAL

3 (a)(1) An order of the Family Division of the Superior Court in proceedings
4 under this chapter shall not:

5 (A) be deemed a conviction of crime;

6 (B) impose any civil disabilities sanctions ordinarily resulting from a
7 conviction; or

8 (C) operate to disqualify the child in any civil service application or
9 appointment.

10 (2) Notwithstanding subdivision (1) of this subsection, ~~an order of~~
11 delinquency in proceedings a merits adjudication order issued pursuant to
12 section 5229 of this title in proceedings concerning a child or youthful offender
13 who is alleged to have committed a violation of those sections specified in 23
14 V.S.A. § 801(a)(1) shall be an event in addition to those specified therein,
15 enabling the Commissioner of Motor Vehicles to require proof of financial
16 responsibility under 23 V.S.A. chapter 11.

17 (3) Notwithstanding subdivision (1) of this subsection, a merits
18 adjudication order issued pursuant to section 5229 of this title in proceedings
19 concerning a child or youthful offender who is alleged to have committed a
20 violation of 23 V.S.A. chapter 13, subchapter 13 shall be reported to the

1 Commissioner of Motor Vehicles in accordance with the provisions of 23

2 V.S.A. § 1709.

3 * * *

4 Sec. 4. 33 V.S.A. § 5229 is amended to read:

5 § 5229. MERITS ADJUDICATION

6 * * *

7 (g) If, based on the child’s admission or the evidence presented, the court
8 finds beyond a reasonable doubt that the child has committed a delinquent act,
9 the court shall order the Department to prepare a disposition case plan not later
10 than seven business days before the disposition hearing and shall send a record
11 of the adjudication to the Commissioner of Motor Vehicles within 10 days
12 following its issuance. In no event shall a disposition hearing be held later
13 than 35 days after a finding that a child is delinquent.

14 * * *

15 Sec. 5. IMPAIRED DRIVING; IMPLIED CONSENT; PROCESSING; TASK

16 FORCE; REPORT

17 (a) Creation. There is created the Impaired Driving Processing Task Force
18 to study the concept of implied consent during impaired driving investigations
19 with the objective to recommend approaches that minimize the duration for
20 which impaired driving suspects are held during investigations and to
21 streamline the processing and paperwork associated with such investigations.

1 (b) Membership. The Task Force shall be composed of the following
2 members:

3 (1) the Chief Judge of the Superior Court or designee;

4 (2) the Defender General or designee;

5 (3) the Commissioner of Public Safety or designee;

6 (4) the Commissioner of Motor Vehicles or designee;

7 (5) the Executive Director of the Department of State’s Attorneys and
8 Sheriffs or designee;

9 (6) the President of the Vermont Sheriffs’ Association or designee; and

10 (7) a representative from the Vermont Police Association.

11 (c) Powers and duties. The Task Force shall study impaired driving
12 investigations in Vermont, including the following issues:

13 (1) the constitutional and statutory requirements of implied consent;

14 (2) how constitutional and statutory requirements related to implied
15 consent affect the duration for which suspected impaired drivers are held by
16 law enforcement;

17 (3) methods to minimize statutory requirements related to implied
18 consent that pass constitutional muster; and

19 (4) any other relevant issues in accordance with subsection (a) of this
20 section.

1 (d) Assistance. The Task Force shall have the administrative, technical,
2 and legal assistance of the Department of Public Safety.

3 (e) Report. On or before November 15, 2025, the Task Force shall submit
4 a written report in the form of proposed legislation to the House and Senate
5 Committees on Judiciary with any recommendations for legislative action.

6 (f) Meetings.

7 (1) The Commissioner of Public Safety or designee shall call the first
8 meeting of the Task Force to occur on or before August 1, 2025.

9 (2) The Task Force shall select a chair from among its members at the
10 first meeting.

11 (3) The Task Force shall meet not more than six times.

12 (4) A majority of the Task Force’s membership shall constitute a
13 quorum.

14 (5) The Task Force shall cease to exist on February 1, 2026.

15 (g) Compensation and reimbursement. Members of the Task Force who
16 are not otherwise compensated or reimbursed for their attendance shall be
17 entitled to compensation and reimbursement of expenses pursuant to 32 V.S.A.
18 § 1010 for not more than six meetings.

19 Sec. 6. EFFECTIVE DATE

20 This act shall take effect on July 1, 2025.

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE