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H.146

Introduced by Representatives Grad of Moretown, LaLonde of

South Burlington, Conquest of Newbury, and Willhoit of

St. Johnsbury

Referred to Committee on

Date:

Subject: Motor vehicles; operating under the influence of alcohol; implied

consent; blood test

Statement of purpose of bill as introduced: This bill proposes to make

Vermont's implied consent statute consistent with the U.S. Supreme Court's

decision in *Birchfield v. North Dakota* by providing that: (1) a warrant is

required before a blood test can be given to a person suspected of DUI; and (2)

a person cannot be criminally prosecuted for refusing to submit to the blood

test.

An act relating to tests to determine the blood alcohol content of a motor
vehicle operator

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

2 Sec. 1. 23 V.S.A. § 1202 is amended to read:

3 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
4 ALCOHOL CONTENT

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

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

20 (3) Evidentiary test. The evidentiary test shall be required of a person
21 when a law enforcement officer has reasonable grounds to believe that the

1 person was operating, attempting to operate, or in actual physical control of a
2 vehicle in violation of section 1201 of this title.

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

9 ~~(b) If the person refuses to submit to an evidentiary test it shall not be~~
10 ~~given, except as provided in subsection (f) of this section, but the A refusal to~~
11 ~~take a breath test~~ may be introduced as evidence in a criminal proceeding.

12 * * *

13 (f) If a blood test is sought from a person pursuant to subdivision (a)(2) of
14 this section, or if a person who has been involved in an accident or collision
15 resulting in serious bodily injury or death to another refuses an evidentiary test,
16 a law enforcement officer may apply for a search warrant pursuant to Rule 41
17 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an
18 evidentiary test. If a blood sample is obtained by search warrant, the fact of
19 the refusal may still be introduced in evidence, in addition to the results of the
20 evidentiary test. Once a law enforcement official begins the application
21 process for a search warrant, the law enforcement official is not obligated to

