

House Proposal of Amendment

S. 103

An act relating to the study and recommendation of ignition interlock device legislation.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 674 is amended to read:

§ 674. OPERATING AFTER SUSPENSION OR REVOCATION OF LICENSE;

PENALTY; REMOVAL OF REGISTRATION PLATES; TOWING

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(b) ~~A~~ Except as authorized in section 1213 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of section 1201 of this title or has been suspended under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before reinstatement of the license shall be imprisoned not more than two years or fined not more than \$5,000.00, or both. The sentence shall be subject to the following mandatory minimum terms:

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Sec. 2. 23 V.S.A. § 1130 is amended to read:

§ 1130. ~~PERMITTING EMPLOYING AN UNLICENSED PERSON TO OPERATE;~~

PERMITTING UNAUTHORIZED OPERATION

No person shall knowingly employ, as operator of a motor vehicle, a person not licensed as provided in this title. No person shall knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a person who has no legal right to do so, or in violation of a provision of this title.

Sec. 3. 23 V.S.A. § 1200 is amended to read:

§ 1200. DEFINITIONS

As used in this subchapter:

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(8) “Ignition interlock device” means a device that is capable of measuring a person’s alcohol concentration and that prevents a motor vehicle from being started by a person whose alcohol concentration is 0.02 or greater.

(9) “Ignition interlock restricted driver’s license” or “ignition interlock RDL” or “RDL” means a restricted license or privilege to operate a motor vehicle issued by the commissioner allowing a person whose license or privilege to operate has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, installed with an approved ignition interlock device.

Sec. 4. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration of 0.08 or more; suspension periods.

For a first suspension under this subchapter:

(1) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, the commissioner shall suspend the person’s operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of six months and until the person complies with section 1209a of this title.

(2) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person’s alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control, the commissioner shall suspend the person’s operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title, notwithstanding the 90-day suspension unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

* * *

(d) Form of notice. The notice of intention to suspend and of suspension shall be in a form prescribed by the supreme court. The notice shall include an explanation of rights, a form to be used to request a hearing, and, if a hearing is requested, the date, time and location of the district court where the person must appear for a preliminary hearing. The notice shall also contain, in boldface print, the following:

(1) You have the right to ask for a hearing to contest the suspension of your operator's license.

(2) This notice shall serve as a temporary operator's license and is valid until 12:01 a.m. of the date of suspension. If this is your first violation of section 1201 of this title and if you do not request a hearing, your license will be suspended as provided in this notice. If this is your second or subsequent violation of section 1201 of this title, your license will be suspended on the 11th day after you receive this notice. It is a crime to drive while your license is suspended unless you have been issued an ignition interlock restricted driver's license.

* * *

(m) Second and subsequent suspensions. For a second suspension under this ~~section~~ subchapter, the period of suspension shall be 18 months and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of this 18-month period unless the alleged offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another. For a third or subsequent suspension under this ~~section~~ subchapter, the period of suspension shall be life. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the alleged offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

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Sec. 5. 23 V.S.A. § 1206 is amended to read:

§ 1206. SUSPENSION OF LICENSE FOR DRIVING WHILE UNDER INFLUENCE, ~~REINSTATEMENT~~; FIRST CONVICTIONS

(a) ~~First conviction~~ First conviction—generally. Except as otherwise provided, upon conviction of a person for violating a provision of section 1201 of this title, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the defendant complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title, notwithstanding the 90-day suspension unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) ~~Extended suspension~~ Extended suspension—fatality. In cases resulting in a fatality, the period of suspension shall be one year and until the defendant complies with section 1209a of this title.

(c) Extended suspension—refusal; serious bodily injury. Upon conviction of a person for violating a provision of subsection 1201(b) ~~or~~ (c) of this title involving a collision in which serious bodily injury resulted, or upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for a period of six months, and until the defendant complies with section 1209a of this title.

Sec. 6. 23 V.S.A. § 1208 is amended to read:

§ 1208. SUSPENSIONS FOR SUBSEQUENT CONVICTIONS

(a) Second conviction. Upon a second conviction of a person violating a provision of section 1201 of this title and upon final determination of an appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately suspend the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for 18 months and until the defendant complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of this 18-month period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(b) Third conviction. Upon a third or subsequent conviction of a person violating a provision of section 1201 of this title and upon final determination of any appeal, the court shall forward the conviction report forthwith to the commissioner of motor vehicles. The commissioner shall immediately revoke the person's operating license, or nonresident operating privilege or the privilege of an unlicensed operator to operate a motor vehicle for life. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after one year of this lifetime suspension unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

Sec. 7. 23 V.S.A. § 1209a is amended to read:

§ 1209a. CONDITIONS OF REINSTATEMENT; ALCOHOL AND
DRIVING
EDUCATION; SCREENING; THERAPY PROGRAMS

(a) Conditions of reinstatement. No license suspended or revoked under this subchapter, except a license suspended under section 1216 of this title, shall be reinstated except as follows:

(1) In the case of a first suspension, a license shall ~~not~~ be reinstated ~~until~~ ~~the person has~~ only:

(A) after the person has successfully completed an alcohol and driving education program, at the person's own expense, followed by an assessment of the need for further treatment by a state designated counselor, at the person's own expense, to determine whether reinstatement should be further conditioned on satisfactory completion of a therapy program agreed to by the person and the drinking driver rehabilitation program director; ~~and~~

(B) if the screening indicates that therapy is needed, after the person has satisfactorily completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director;

(C) if electing to operate under an ignition interlock RDL, after the person has operated under a valid RDL for a period of six months, or if the RDL is permanently revoked, after one year from the date of suspension; and

(D) if the person has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter.

(2) In the case of a second suspension, a license shall not be reinstated until the person has successfully completed an alcohol and driving rehabilitation program ~~and~~; has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director; if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for 18 months; and has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter. However, if the RDL is permanently revoked, the person shall not be eligible for license reinstatement until two years from the date of suspension.

(3) In the case of a third or subsequent suspension or a revocation, a license shall not be reinstated until the person has successfully completed an alcohol and driving rehabilitation program; has completed or shown substantial progress in completing a therapy program at the person's own expense agreed to by the person and the driver rehabilitation program director; has satisfied the requirements of subsection (b) of this section; if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for a period of three years; and has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter. However, if the RDL is permanently revoked, the person shall not be eligible for license reinstatement until four years from the date of suspension.

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Sec. 8. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE; ARREST UPON VIOLATION

(a) At the first appearance before a judicial officer of a person charged with violation of section 1201 of this title, the court, upon a plea of not guilty, shall consider whether to establish conditions of release. Those conditions may include a requirement that the defendant not operate a motor vehicle if there is a likelihood that the defendant will operate a motor vehicle in violation of section 1201 or section 1213 of this title. The court may consider all relevant evidence, including whether the defendant has a motor vehicle or criminal record indicating prior convictions for one or more alcohol-related offenses. Prior convictions may be established for this purpose by a noncertified photocopy of a motor vehicle record, a computer printout or an affidavit. Nothing in this section limits the authority of a judicial officer to impose other conditions of release, nor does it limit or modify other statutory provisions concerning license suspension or revocation or the right of a person to operate a motor vehicle.

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Sec. 9. 23 V.S.A. § 1213 is amended to read:

§ 1213. ~~RESERVED FOR FUTURE USE.~~ IGNITION INTERLOCK RESTRICTED

DRIVER'S LICENSE; PENALTIES

(a) First offense. A person whose license or privilege to operate is suspended for a first offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(a)(2), 1206(a), or 1216(a)(1) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving education program. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(b) Second offense. A person whose license or privilege to operate is suspended for a second offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in

section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under subsection 1205(m), 1208(a), or 1216(a)(2) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in subsection 1205(m), 1208(a), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(c) Third or subsequent offense. A person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under subsection 1205(m), 1208(b), or 1216(a)(2) of this title and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in subsection 1205(m), 1208(b), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL.

(d) If a fine is to be imposed for a conviction of a violation of section 1201 of this title, upon receipt of proof of installation of an approved ignition interlock device, the court shall order that the fine conditionally be reduced by one-half to defray the costs of the ignition interlock device, subject to the person's ongoing operation under, and compliance with the terms of, a valid ignition interlock RDL as set forth in this section.

(e) The holder of an ignition interlock RDL shall pay the costs of installing, purchasing or leasing, and removing the ignition interlock device as well as calibrating the device and retrieving data from it periodically as may be specified by the commissioner. The holder of an ignition interlock RDL shall notify the commissioner and the department of corrections in writing if the device is removed or if the vehicle in which the device is installed is sold,

repossessed, or otherwise conveyed. Notice shall be provided within 10 days of such removal or conveyance, and the commissioner shall cancel the person's ignition interlock RDL upon receipt of notice under this subsection.

(f) The holder of an ignition interlock RDL shall operate only motor vehicles equipped with an ignition interlock device until his or her license or privilege to operate is reinstated, shall not attempt or take any action to tamper with or otherwise circumvent the holder's ignition interlock device, and shall not continue to drive after failing a retest.

(g) A person who violates any provision of subsection (f) of this section before reinstatement of a license or privilege to operate suspended under this subchapter commits a criminal offense, shall be subject to the sanctions and procedures provided for in subsections 674(b)-(i) of this title, and upon conviction shall have his or her ignition interlock RDL permanently revoked. A person convicted of a separate criminal offense under this title also shall have his or her ignition interlock RDL permanently revoked.

(h) A person who violates a rule adopted by the commissioner pursuant to subsection (l) of this section commits a civil traffic violation subject to the jurisdiction of the judicial bureau and shall be subject to a civil penalty of up to \$500.00 and up to a one-year recall of the person's ignition interlock RDL.

(i) Upon receipt of notice that the holder of an ignition interlock RDL has been adjudicated of a separate civil offense under this title that would result in suspension, revocation, or recall of a license or privilege to operate, the commissioner shall recall the person's ignition interlock RDL for the same period that the license or privilege to operate would have been suspended, revoked, or recalled.

(j) Upon expiration of a recall imposed under subsection (h) or (i) of this section and receipt of satisfactory proof of installation of an approved ignition interlock device, financial responsibility as provided in section 801 of this title, and enrollment in or completion of an alcohol and driving education or rehabilitation program, the commissioner shall reinstate the ignition interlock RDL. The commissioner may charge a fee for reinstatement in the amount specified in section 675 of this title.

(k) A person shall not knowingly and voluntarily tamper with an ignition interlock device on behalf of another person or otherwise assist another person to circumvent an ignition interlock device. A person adjudicated of a violation of this subsection shall be subject to a civil penalty of \$500.00.

(l)(1) The commissioner, in consultation with the commissioner of corrections and any individuals or entities the commissioner deems appropriate, shall adopt rules and may enter into agreements to implement the provisions of this section.

(2) The commissioner shall establish uniform performance standards for ignition interlock devices, including required levels of accuracy in measuring blood alcohol concentration, efficacy in distinguishing valid breath samples, the occurrence of random retests while the vehicle is running, and automatic signaling by the vehicle if the operator fails such a retest. The commissioner shall certify devices that meet these standards, specify any periodic calibration that may be required to ensure accuracy of the devices, and specify the means and frequency of the retrieval and sharing of data collected by ignition interlock devices.

Sec. 10. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

(a) A person under the age of 21 who operates, attempts to operate or is in actual physical control of a vehicle on a highway when the person's alcohol concentration is 0.02 or more, commits a civil traffic violation subject to the jurisdiction of the judicial bureau and subject to the following sanctions:

(1) For a first violation, the person's license or privilege to operate shall be suspended for six months and until the person complies with subdivision 1209a(a)(1) of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title, notwithstanding the six-month suspension unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

(2) For a second or subsequent violation, the person's license or privilege to operate shall be suspended until the person reaches the age of 21 or for one year, whichever is longer, and complies with ~~section~~ subdivision 1209a(a)(2) of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 90 days of the applicable suspension period unless the offense involved a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test or a collision resulting in serious bodily injury or death to another.

~~(b) Notwithstanding the provisions in subsection (a) of this section to the contrary, a~~ A person's license or privilege to operate that has been suspended under this section shall not be reinstated until:

(1) the commissioner has received satisfactory evidence that the person has complied with section 1209a of this title and the provider of the therapy program has been paid in full;

(2) the person has no pending criminal charges, civil citations, or unpaid civil penalties for a violation under this chapter; and

(3)(A) a person operating under an ignition interlock RDL for a first offense has operated under a valid RDL for a period of nine months or, if the RDL is permanently revoked, after one year from the date of suspension; or

(B) a person operating under an ignition interlock RDL for a second or subsequent offense has operated under a valid RDL for a period of 18 months or until the person is 21, whichever is longer, or if the RDL is permanently revoked, after two years from the date of suspension or until the person is 21, whichever is longer.

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Sec. 11. TRANSITION RULE

On July 1, 2011, ignition interlock restricted driver's licenses shall be available to persons suspended for a violation of 23 V.S.A. § 1201 or 1216 or pursuant to 23 V.S.A. § 1205 prior to July 1, 2011, if such persons otherwise would be eligible for an ignition interlock RDL under this act. Persons who elect to obtain an ignition interlock RDL pursuant to this section shall be subject to all of the provisions of this act but shall not be eligible for the reduced fine specified in Sec. 9(d), and shall be so notified by the commissioner in advance of obtaining an ignition interlock RDL.

Sec. 12. INDIGENT FUND AND DMV FEE STUDY

(a) The commissioner of motor vehicles, in consultation with any individuals or entities the commissioner deems appropriate, shall study whether creation of a fund to assist indigent persons in defraying the costs associated with ignition interlock devices is likely to promote the use of ignition interlock devices, as well as potential funding sources and mechanisms. In conducting this study, the commissioner shall review ignition interlock laws and practices and usage of ignition interlock devices in other states.

(b) The commissioner also shall study the costs associated with issuing and renewing ignition interlock RDLs and the minimum fees that will be required to defray the costs of issuing and renewing ignition interlock RDLs.

(c) The commissioner shall report the findings of these studies and any recommendations concerning creation of an ignition interlock indigent fund or minimum fees to the senate and house committees on judiciary and on transportation by January 15, 2011.

Sec. 13. EFFECTIVENESS STUDY

The commissioner of motor vehicles shall monitor and calculate the rate of use of ignition interlock devices in Vermont by those suspended for a violation of 23 V.S.A. § 1201 or 1216 or pursuant to 23 V.S.A. § 1205 on or after July 1, 2011. The commissioner, in consultation with any individuals or entities the commissioner deems appropriate, shall study whether changes to this act,

including mandating installation of ignition interlock devices, are likely to promote usage. The commissioner shall report the findings of this study and any recommendations to the senate and house committees on judiciary and on transportation by January 15, 2013.

Sec. 14. EFFECTIVE DATES

(a) This section, Sec. 12, and subsection 1213(1) of Sec. 9 (ignition interlock rulemaking) shall take effect on passage.

(b) All other sections of this act shall take effect on July 1, 2011.

and that after passage, the title of the bill be amended to read: “An act relating to ignition interlock restricted drivers’ licenses”