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H.264

Introduced by Representatives Savage of Swanton, Andrews of Rutland City,
Batchelor of Derby, Bouchard of Colchester, Branagan of
Georgia, Brennan of Colchester, Burditt of West Rutland,
Canfield of Fair Haven, Clark of Vergennes, Consejo of
Sheldon, Degree of St. Albans City, Devereux of Mount Holly,
Dickinson of St. Albans Town, Fagan of Rutland City, Gilbert
of Fairfax, Grad of Moretown, Hebert of Vernon, Higley of
Lowell, Hubert of Milton, Keenan of St. Albans City,
McAllister of Highgate, McFaun of Barre Town, McNeil of
Rutland Town, Morrissey of Bennington, Myers of Essex,
Pearce of Richford, Perley of Enosburgh, Shaw of Pittsford,
Smith of New Haven, Strong of Albany, Waite-Simpson of
Essex, Winters of Williamstown, Wright of Burlington and
Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Motor vehicles; driving while intoxicated; registration and forfeiture
of vehicles

1 Statement of purpose: This bill proposes a number of provisions to enhance
2 the penalties for driving while intoxicated. The bill proposes to:

3 (1) require that a person have insurance in order to register a motor vehicle;

4 (2) prohibit a person from registering a motor vehicle if the person's
5 license or learner's permit has been suspended or revoked in any jurisdiction;

6 (3) establish criminal penalties for permitting an unlicensed person to
7 operate a motor vehicle, and permit forfeiture of the vehicle if death or serious
8 bodily injury results;

9 (4) create a five-year minimum jail sentence for DUI with death or serious
10 bodily injury resulting if the offender has two prior DUI convictions, unless the
11 court finds that a lesser sentence will serve the interests of justice and public
12 safety; and

13 (5) permit the immobilization and forfeiture of a vehicle operated in
14 violation of a parole condition which prohibits the operator from driving.

15 An act relating to driving while intoxicated and to forfeiture and registration
16 of motor vehicles

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

18 Sec. 1. PURPOSE; SHORT TITLE

19 (a) This act is intended to help prevent the catastrophic harm needlessly
20 caused to Vermonters and their families and friends by the irresponsibility of

1 persons who repeatedly operate motor vehicles while under the influence of
2 alcohol or drugs.

3 (b) This act shall be known as "Nick's Law."

4 Sec. 2. 23 V.S.A. § 303 is amended to read:

5 § 303. APPLICATION REQUIRED

6 (a) The commissioner or his or her duly authorized agent shall register a
7 motor vehicle, trailer, or semi-trailer when application therefor, on a form
8 prescribed by the commissioner, showing such motor vehicle to be properly
9 equipped and in good mechanical condition, is filed with him or her,
10 accompanied by the required registration fee, the proof of financial
11 responsibility required under section 800 of this title, and evidence of the
12 applicant's ownership of the vehicle in such form as the commissioner may
13 reasonably require. Except for state or municipal vehicles, registrants, and
14 titled owners shall be identical.

15 (b) An application for registration may be refused by the commissioner if it
16 is not accompanied by proof of payment of the use tax imposed by ~~section~~
17 Section 4481 of the Internal Revenue Code of 1986 in such form as may be
18 prescribed by the Secretary of the Treasury or in another form acceptable to the
19 commissioner in the case of vehicles which are subject to the tax.

1 (c) An application for registration shall be refused by the commissioner if
2 the applicant's license or learner's permit is suspended or revoked in any
3 jurisdiction.

4 Sec. 3. 23 V.S.A. § 1130 is amended to read:

5 § 1130. PERMITTING UNLICENSED PERSON TO OPERATE

6 (a) No person shall knowingly employ, as operator of a motor vehicle, a
7 person not licensed as provided in this title.

8 (b) No person shall knowingly permit a motor vehicle owned by him or her
9 or under his or her control to be operated by a person who has no legal right to
10 do so, or in violation of a provision of this title.

11 (c)(1) A person who violates subsection (a) or (b) of this section shall be
12 fined not more than \$1,000.00 or imprisoned for not more than six months or
13 both.

14 (2) If the death of any person results from a violation of subsection (b)
15 of this section, or if serious bodily injury as defined in 13 V.S.A. § 1021(2)
16 results to any person other than the operator from the violation, the person
17 convicted of the violation shall be fined not more than \$5,000.00 or imprisoned
18 not more than two years or both. The provisions of this subdivision do not
19 limit or restrict prosecutions for manslaughter.

1 Sec. 4. 23 V.S.A. § 1210 is amended to read:

2 § 1210. PENALTIES

3 * * *

4 (d) Third or subsequent offense. A person convicted of violating section
5 1201 of this title who has twice been convicted of violation of that section shall
6 be fined not more than ~~\$2,500.00~~ \$5,000.00 or imprisoned not more than ~~five~~
7 ten years, or both. At least 400 hours of community service shall be
8 performed, or 100 consecutive hours of the sentence of imprisonment shall be
9 served and may not be suspended or deferred or served as a supervised
10 sentence, except that credit for a sentence of imprisonment may be received for
11 time served in a residential alcohol facility pursuant to sentence if the program
12 is successfully completed. The court shall not impose a sentence that does not
13 include a term of imprisonment unless the court makes written findings on the
14 record that a nonincarcerative sentence will serve the interests of justice and
15 public safety.

16 (e)(1) Death resulting. If the death of any person results from a violation of
17 section 1201 of this title, the person convicted of the violation shall be fined
18 not more than \$10,000.00 or imprisoned not less than one year nor more than
19 15 years, or both. The provisions of this subsection do not limit or restrict
20 prosecutions for manslaughter.

1 (2) If the death of more than one person results from a violation of
2 section 1201 of this title, the operator may be convicted of a separate violation
3 of this subdivision for each decedent.

4 (3)(A) If the death of any person results from a violation of section 1201
5 of this title, and the person convicted of the violation has twice been convicted
6 of a violation of that section, a sentence ordered pursuant to this subsection
7 shall, except as provided in subdivision (B) of this subdivision (3), include at
8 least a five-year term of imprisonment. The five-year minimum term of
9 imprisonment required by this subdivision shall be served and may not be
10 suspended, deferred, or served as a supervised sentence. The defendant shall
11 not be eligible for probation, parole, furlough, or any other type of early
12 release until the expiration of the five-year term of imprisonment.

13 (B) Notwithstanding subdivision (A) of this subdivision (3), if the
14 death of any person results from a violation of section 1201 of this title, and
15 the person convicted of the violation has twice been convicted of a violation of
16 that section, the court may impose a sentence that does not include a term of
17 imprisonment or which includes a term of imprisonment of less than five years
18 if the court makes written findings on the record that such a sentence will serve
19 the interests of justice and public safety.

20 (f)(1) Injury resulting. If serious bodily injury, as defined in 13 V.S.A.
21 § 1021(2), results to any person other than the operator from a violation of

1 section 1201 of this title, the person convicted of the violation shall be fined
2 not more than \$5,000.00, or imprisoned not more than 15 years, or both.

3 (2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to
4 more than one person other than the operator from a violation of section 1201
5 of this title, the operator may be convicted of a separate violation of this
6 subdivision for each person injured.

7 (3)(A) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results
8 to any person other than the operator from a violation of section 1201 of this
9 title, and the person convicted of the violation has twice been convicted of a
10 violation of section 1201, a sentence ordered pursuant to this subsection shall,
11 except as provided in subdivision (B) of this subdivision (3), include at least a
12 five-year term of imprisonment. The five-year minimum term of
13 imprisonment required by this subdivision shall be served and may not be
14 suspended, deferred, or served as a supervised sentence. The defendant shall
15 not be eligible for probation, parole, furlough, or any other type of early
16 release until the expiration of the five-year term of imprisonment.

17 (B) Notwithstanding subdivision (A) of this subdivision (3), if
18 serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person
19 other than the operator from a violation of section 1201 of this title, and the
20 person convicted of the violation has twice been convicted of a violation of
21 section 1201, the court may impose a sentence that does not include a term of

1 imprisonment or which includes a term of imprisonment of less than five years
2 if the court makes written findings on the record that such a sentence will serve
3 the interests of justice and public safety.

4 * * *

5 Sec. 5. 23 V.S.A. § 1212 is amended to read:

6 § 1212. CONDITIONS OF RELEASE AND PAROLE; ARREST UPON
7 VIOLATION

8 * * *

9 (d) A law enforcement officer or a corrections officer who observes a
10 person violating a condition of parole requiring that the person not operate a
11 motor vehicle may promptly arrest the person for violating the condition and
12 shall detain the person pursuant to 28 V.S.A. § 551. The officer shall
13 immobilize the vehicle and immediately notify the parole board of the
14 suspected violation. If the parole board determines pursuant to 28 V.S.A.
15 § 552 that a parole violation has occurred, the board shall notify the state's
16 attorney in the county where the violation occurred, who shall institute
17 forfeiture proceedings against the vehicle under section 1213c of this title as
18 soon as practicable.

1 Sec. 6. 23 V.S.A. § 1213b is amended to read:

2 § 1213b. FORFEITURE OF VEHICLE

3 At the time of sentencing after a third or subsequent conviction under
4 section 1201 of this title or after a conviction under subdivision 1130(c)(2) of
5 this title, or upon a determination by the parole board that a person has violated
6 a condition of parole requiring that the person not operate a motor vehicle, the
7 court may, upon motion of the state and in addition to any penalty imposed by
8 law and after notice and hearing, order the motor vehicle operated by the
9 defendant or parolee at the time of the offense forfeited and sold as provided in
10 section 1213c of this title.