

1 H.264

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

16 Referred to Committee on

17 Date:

18 Subject: Motor vehicles; driving while intoxicated; registration and forfeiture
19 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.~~

11
Sec. 1. PURPOSE

This act is intended to help prevent the harm caused to Vermonters and their families and friends by persons who repeatedly operate motor vehicles while under the influence of alcohol or other drugs. The list of Vermonters who have died or been injured because of persons who repeatedly operate motor vehicles while under the influence of alcohol or other drugs is far too long. It includes both the victims of recent high profile cases, such as Nick Fournier and Kaye Borneman, as well as others whose deaths and injuries may have received less public notice. All of these people are and were equally precious. This act cannot now help them, but it is intended to use lessons learned from these losses to create new approaches to help prevent the needless and heartrending harm suffered by the victims, living and dead, of those who drive under the influence.

**** Registration, licensing, and insurance ****

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

§ 303. APPLICATION REQUIRED

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

(c)(1) The commissioner shall refuse an application for registration of a vehicle with a single registrant or revoke the registration of a vehicle with a single registrant if the applicant's or registrant's license or learner's permit is suspended or revoked in any jurisdiction.

(2) The commissioner shall not approve an application for a transfer of title to a motor vehicle if the transferor's license or learner's permit is suspended or revoked in any jurisdiction and the transferor is named as a transferee or new owner on the application.

Sec. 3. 23 V.S.A. § 800 is amended to read:

§ 800. MAINTENANCE OF FINANCIAL RESPONSIBILITY

(a) No owner or operator of a motor vehicle required to be licensed shall operate or permit the operation of the vehicle upon the highways of the state without having in effect an automobile liability policy or bond in the amounts of at least \$25,000.00 for one person and \$50,000.00 for two or more persons killed or injured and \$10,000.00 for damages to property in any one accident. In lieu thereof, evidence of self-insurance in the amount of \$115,000.00 must be filed with the commissioner of motor vehicles. Such financial responsibility shall be maintained and evidenced in a form prescribed by the commissioner. The commissioner may require that evidence of financial responsibility be produced before motor vehicle inspections are performed pursuant to the requirements of section 1222 of this title.

(b) A person who violates this section shall be assessed a civil penalty of not more than ~~\$100.00~~ \$500.00, and such violation shall be a traffic violation within the meaning of chapter 24 of this title.

Sec. 4. DEPARTMENT OF MOTOR VEHICLES PROCEDURES

On or before January 15, 2012, the department of motor vehicles shall:

(1) configure its computer system so that it is able to accept notice directly from insurance companies that a person's motor vehicle insurance policy has been cancelled; and

(2) develop a system which, when a person applies for a license to operate a motor vehicle, alerts the department that the person's license is suspended in another jurisdiction.

**** Permitting Unlicensed or Impaired Person to Operate ****

Sec. 5. 23 V.S.A. § 1130 is amended to read:

§ 1130. PERMITTING UNLICENSED OR IMPAIRED PERSON TO OPERATE

(a) No person shall knowingly employ, as operator of a motor vehicle, a another person as an operator of a motor vehicle knowing that the other person is not licensed as provided in this title.

(b) No person shall knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a another person who if the person who owns or controls the vehicle knows that the other person has no legal right to do so, or in violation of a provision of this title operate the vehicle.

(c) No person shall permit a motor vehicle owned by him or her or under his or her control to be operated by another person if the person who owns or controls the vehicle has actual or constructive knowledge that the operator is:

(1) under the influence of intoxicating liquor; or

(2) under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely.

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

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

(e) In a prosecution under this section, the defendant may raise as an affirmative defense to be proven by a preponderance of the evidence that the unlicensed person obtained permission from the defendant to operate the motor vehicle by placing the defendant under duress or subjecting the defendant to coercion.

** * * DUI penalties and alternative sanctions * * **

Sec. 6. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

** * **

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

~~(e)(1) Fourth or subsequent offense. A person convicted of violating section 1201 of this title who has previously been convicted three times of a violation of that section shall be fined not more than \$5,000.00 or imprisoned not more than ten years, or both. At least 200 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court shall not impose a sentence that does not include a term of imprisonment unless the court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.~~

~~(2) The department of corrections shall provide appropriate alcohol and substance abuse therapy to any person convicted of a violation of this subsection.~~

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

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

~~(3)(A) If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this~~

subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

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

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

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

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

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(g)~~(h) *Determination of fines. In determining appropriate fines under this section the court may take into account the total cost to a defendant of alcohol screening, participation in the alcohol and driving education program and therapy and the income of the defendant.*

~~(h)~~(i) *A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of health for deposit in the health department's laboratory services special fund.*

~~(i)~~(j) *A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to the office of defender general for deposit in the public defender special fund specifying the source of the monies being deposited. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.*

~~(j)~~(k) *A person convicted of violating section 1201 of this title shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.*

Sec. 7. COMPREHENSIVE SYSTEM TO REDUCE REPEAT DUI

*OFFENSES; DEPARTMENTS OF MOTOR VEHICLES, PUBLIC
SAFETY, AND CORRECTIONS*

On or before January 15, 2012, the departments of motor vehicles, public safety, and corrections shall jointly report to the house and senate committees on judiciary a plan for implementation of a comprehensive system of penalties, alternative sanctions, and treatment to reduce the number of persons with repeat offenses of operating motor vehicles while under the influence of alcohol or other drugs. The system may include, among other measures, the following:

(1) a mandatory sobriety program for repeat DUI offenders similar to South Dakota's "24/7 Sobriety Program;"

(2) increased penalties for operating a vehicle with an alcohol concentration substantially greater than the legal limit;

(3) lowering the legally permissible alcohol concentration for operating a motor vehicle by persons who have previously been convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

(4) enhanced use of ignition interlock devices;

(5) mandatory alcohol and drug counseling and treatment for persons convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

~~(6) establishment of a secure facility for housing and treatment of persons convicted of operating a motor vehicle while under the influence of alcohol or drugs; and~~

~~(7) the circumstances under which the operator of a motor vehicle may be required to submit to a blood test to determine whether he or she has been operating the vehicle while under the influence of a drug other than alcohol.~~

1 (6) establishment of a secure facility for housing and treatment of
2 persons convicted of operating a motor vehicle while under the influence of
3 alcohol or drugs;

4 (7) the circumstances under which the operator of a motor vehicle may
5 be required to submit to a blood test to determine whether he or she has been
6 operating the vehicle while under the influence of a drug other than alcohol;
7 and

8 (8) revisions that may be appropriate to the DUI statutes when the
9 circumstances involve operating a motor vehicle under the influence of a drug
10 that has been legally prescribed to the operator.

** * * Detention of operator; forfeiture and immobilization of vehicle * * **

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

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

** * **

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

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

§ 1213b. FORFEITURE OF VEHICLE

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