H.768

Introduced by Committee on Judiciary

Date:

Subject: Motor vehicles; ignition interlock restricted driver's licenses; civil suspension; reinstatement

Statement of purpose: This bill proposes to make miscellaneous amendments to the laws governing ignition interlock restricted driver's licenses, and to update the law governing civil suspensions for driving while intoxicated.

An act relating to ignition interlock restricted driver's licenses and civil suspensions

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

Sec. 1. 23 V.S.A. § 1200(10) is added to read:

(10) "Random retest" means a test of a vehicle operator's blood alcohol concentration, other than a test required to start the vehicle, that is required at random intervals during operation of a vehicle equipped with an ignition interlock device.

Sec. 2. 23 V.S.A. § 1213 is amended to read:

§ 1213. 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)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon receipt of a $125.00 application fee, 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. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(1), 1205(a)(2), 1206(a), or 1216(a)(1) of this title. ~~An~~ A new ignition interlock RDL shall expire ~~upon reinstatement of a person's regular license or privilege to operate or shall expire unless~~ at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed ~~yearly~~ for one-year terms. 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. The renewal fee shall be $125.00.

(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 section 1205(m), 1208(a), or 1216(a)(2) of this title upon receipt of a $125.00 application fee, 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 section 1205(m), 1208(a), or 1216(a)(2) of this title. ~~An~~ A new ignition interlock RDL shall expire ~~upon reinstatement of a person's regular license or privilege to operate or shall expire unless~~ at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed ~~yearly~~ for one-year terms. 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. The renewal fee shall be $125.00.

(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 section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a $125.00 application fee, 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 section 1205(a)(3), 1205(m), 1208(b), or 1216(a)(2) of this title. ~~An~~ A new ignition interlock RDL shall expire ~~upon reinstatement of a person's regular license or privilege to operate or shall expire unless~~ at midnight on the eve of the second birthday of the applicant following the date of issue, and may be renewed ~~yearly~~ for one-year terms. 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. The renewal fee shall be $125.00.

(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 may order that the fine of an indigent person 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.~~

(1) Prior to the issuance of an ignition interlock RDL under this section, the commissioner shall notify the applicant of the applicable period prior to eligibility for reinstatement under section 1209a or 1216 of this title, and that the reinstatement period may be extended under this subsection (f) or subsections (g)–(h) of this section.

(2)(A) Prior to any such extension of the reinstatement period, the RDL holder shall be given notice and opportunity for a hearing. Service of the notice shall be sent by first class mail to the last known address of the person. The notice shall include a factual description of the grounds for an extension, a reference to the particular law allegedly violated, and a warning that the right to a hearing will be deemed waived, and an extension of the reinstatement period will be imposed, if a written request for a hearing is not received at the department of motor vehicles within 15 days after the date of the notice.

(B) When a holder receives a notice under subdivision (2)(A) of this subsection (f), the holder shall be deemed to have waived the right to a hearing unless a written request for a hearing is received at the department of motor vehicles within 15 days after the date of the notice. If a hearing is not timely requested, the reinstatement period shall be extended in accordance with law.

(C) The provisions of sections 105–107 of this title shall apply to hearings conducted under this subdivision (2).

(3)(A) A holder of an ignition interlock RDL who, prior to eligibility for reinstatement under section 1209a or 1216 of this title, is prevented from starting a motor vehicle because the ignition interlock device records a blood alcohol concentration of 0.04 or above, shall be subject to a three-month extension of the applicable reinstatement period in the event of three such recorded events, and to consecutive three-month extensions for every

additional three recorded events thereafter. The commissioner shall disregard a recording of 0.04 or above for the purposes of this subdivision if the commissioner in his or her discretion finds, based on a pattern of tests or other reliable information, that the recording does not indicate the consumption of intoxicating liquor by the holder. The commissioner shall notify the holder in writing after every recording of 0.04 or above that indicates the consumption of intoxicating liquor by the holder and, prior to any extension under this subdivision, the holder shall have the opportunity to be heard pursuant to subdivision (2) of this subsection (f).

(B) A holder of an ignition interlock RDL who, prior to eligibility for reinstatement under section 1209a or 1216 of this title, fails a random retest because the ignition interlock device records a blood alcohol concentration of 0.04 or above and below 0.08, shall be subject to consecutive three-month extensions of the applicable reinstatement period for every such recorded event. A holder who fails a random retest because of a recording of 0.08 or above shall be subject to consecutive six-month extensions of the applicable reinstatement period for every such recorded event. The commissioner shall disregard a recording of 0.04 or above for the purposes of this subdivision if the commissioner in his or her discretion finds, based on a pattern of tests or other reliable information, that the recording does not indicate the consumption of intoxicating liquor by the holder. The commissioner shall notify the holder

in writing after every recording of 0.04 or above that is indicative of the consumption of intoxicating liquor by the holder and, prior to any extension under this subdivision, the holder shall have the opportunity to be heard pursuant to subdivision (2) of this subsection (f).

(g) The holder of an ignition interlock RDL shall operate only motor vehicles equipped with an ignition interlock device, shall not attempt or take any action to tamper with or otherwise circumvent an ignition interlock device, and, after failing a random retest, shall pull over and shut off the vehicle's engine as soon as practicable. 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~~, the applicable period prior to eligibility for reinstatement under section 1209a or 1216 of this title shall be extended by six months. ~~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~~

shall, after notice and an opportunity to be heard is provided pursuant to subdivision (f)(2) of this section, be subject to an extension of the period prior to eligibility for reinstatement under section 1209a or 1216 of this title in accordance with rules adopted by the commissioner.

(i) Upon receipt of notice that the holder of an ignition interlock RDL has been adjudicated of ~~a separate civil~~ an offense under this title that would result in suspension, revocation, or recall of a license or privilege to operate, the commissioner shall suspend, revoke, or 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. The commissioner may impose a reinstatement fee in accordance with section 675 of this title and require, prior to reinstatement, 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.

(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.~~ [Repealed.]

(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 up to $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~~ rules 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. Persons who elect to obtain an ignition interlock RDL following a conviction under this subchapter when the person's blood alcohol concentration is proven to be 0.16 or more shall be required to install

an ignition interlock device with a Global Positioning System feature. The rules also shall establish a schedule of extensions of the period prior to eligibility for reinstatement as authorized under subsection (h) of this section.

Sec. 3. 23 V.S.A. § 1206 is amended to read:

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

(a) 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 after 30 days of this 90-day 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.

* * *

Sec. 4. 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. 5. 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 be reinstated 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;

(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~~ the person elects to operate under an ignition interlock RDL, after ~~the person has operated under a valid RDL for~~:

(i) a period of nine months (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or

(ii) a period of six months~~, or if the RDL is permanently revoked, after one year from the date of suspension~~ (plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; and

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

(2) In the case of a second suspension, a license shall not be reinstated until:

(A) the person has successfully completed an alcohol and driving rehabilitation program;

(B) the person 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;

(C) ~~if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for~~ if the person elects to operate under an ignition interlock RDL, after:

(i) a period of two years (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or

(ii) a period of 18 months (plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; and

(D) the person has no pending criminal charges, civil citations, or unpaid fines or 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:

(A) the person has successfully completed an alcohol and driving rehabilitation program;

(B) the person 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;

(C) the person has satisfied the requirements of subsection (b) of this section;

(D) ~~if electing to operate under an ignition interlock RDL, has operated under the terms of a valid ignition interlock RDL for~~ if the person elects to operate under an ignition interlock RDL, after:

(i) a period of four years (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or

(ii) a period of three years (plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; and

(E) the person has no pending criminal charges, civil citations, or unpaid fines or 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.~~

(b) Abstinence.

(1) Notwithstanding any other provision of this subchapter, a person whose license has been suspended for life under this subchapter may apply to the driver rehabilitation school director and to the commissioner for reinstatement of his or her driving privilege. The person shall have completed three years of total abstinence from consumption of alcohol or drugs, or both. The beginning date for the period of abstinence shall be no sooner than the effective date of the suspension from which the person is requesting

reinstatement and shall not include any period during which the person is serving a sentence of incarceration to include furlough. The application to the commissioner shall be accompanied by a fee of $500.00. The commissioner shall have the discretion to waive the application fee if the commissioner determines that payment of the fee would present a hardship to the applicant.

(2) If the commissioner, or a medical review board convened by the commissioner, is satisfied by a preponderance of the evidence that the applicant has abstained for the required number of years immediately preceding the application and hearing, has successfully completed a therapy program as required under this section and the person appreciates that he or she cannot drink any amount of alcohol and drive safely, the person's license shall be reinstated immediately, subject to the condition that the person's suspension will be put back in effect in the event any further investigation reveals a return to the consumption of alcohol or drugs and to such additional conditions as the commissioner may impose and, if the person has not previously operated for three years under an ignition interlock RDL, subject to the additional condition that the person shall operate under an ignition interlock restricted driver's license for a period of at least one year following reinstatement under this subsection.

(3) If after notice and hearing the commissioner later finds that the person was violating the conditions of the person's reinstatement under this

subsection, the person's operating license or privilege to operate shall be immediately suspended for the period of the original suspension.

(4) If the commissioner finds that a person reinstated under this subsection was suspended pursuant to section 1205 of this title, or was convicted of a violation of section 1201 of this title, the person shall be conclusively presumed to be in violation of the conditions of his or her reinstatement.

(5) A person shall be eligible for reinstatement under this subsection only once following a suspension for life.

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Sec. 6. 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 after

30 days of this six-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.

(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 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) 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 fines or penalties for a violation under this chapter; and

(3)(A) ~~a person~~ for persons operating under an ignition interlock RDL for a first offense ~~has operated under a valid RDL for~~, after:

(i) a period of one year (plus any extension of this period arising from a violation of section 1213 of this title) if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or

(ii) a period of nine months ~~or, if the RDL is permanently revoked, after one year from the date of suspension~~ (plus any extension of this period arising from a violation of section 1213 of this title) in all other cases; or

(B) ~~a person~~ for persons operating under an ignition interlock RDL for a second or subsequent offense ~~has operated under a valid RDL for~~, after:

(i) a period of two years (plus any extension of this period arising from a violation of section 1213 of this title) or until the person is 21, whichever is longer, if the person's license or privilege to operate is suspended after a refusal to consent to a law enforcement officer's reasonable request for an evidentiary test; or

(ii) a period of 18 months (plus any extension of this period arising from a violation of section 1213 of this title) 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~~ in all other cases.

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Sec. 7. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration ~~of 0.08 or more~~ above legal limits; suspension periods.

(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. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this six-month period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

(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, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title,~~

~~or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title~~ above a limit specified in subsection 1201(a) of this title, 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 after 30 days of this 90-day period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

(3) 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~~ subdivision 1201(d)(2) of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.02 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 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 collision resulting in serious bodily injury or death to another.

(b) Form of officer's affidavit. A law enforcement officer's affidavit in support of a suspension under this section shall be in a standardized form for use throughout the state and shall be sufficient if it contains the following statements:

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

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

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

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

(5) The officer obtained an evidentiary test (noting the time and date the test was taken) and the test indicated that the person's alcohol concentration was ~~0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this~~

~~title~~ above a legal limit specified in subsection 1201(a) or (d) of this title, or the person refused to submit to an evidentiary test.

(6) The officer complied with the Soldiers and Sailors Civil Relief Act (50 U.S.C. § 501 et seq.).

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

(c) Notice of suspension. On behalf of the commissioner of motor vehicles, a law enforcement officer requesting or directing the administration of an evidentiary test shall serve notice of intention to suspend and of suspension on a person who refuses to submit to an evidentiary test or on a person who submits to a test the results of which indicate that the person's alcohol concentration was ~~0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title~~ above a legal limit specified in subsection 1201(a) or (d) of this title, at the time of operating, attempting to operate, or being in actual physical control of a vehicle in violation of section 1201 of this title. The notice shall be signed by the law enforcement officer requesting the test. A copy of the notice shall be sent to the commissioner of motor vehicles and a copy shall be mailed or given to the defendant within three business days of the date the officer receives the results of the test. If mailed, the notice is deemed received three days after mailing to the address provided by the

defendant to the law enforcement officer. A copy of the affidavit of the law enforcement officer shall also be mailed first class mail or given to the defendant within seven days of the date of notice.

* * *

(h) Final hearing.

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

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

(B) whether at the time of the request for the evidentiary test the officer informed the person of the person's rights and the consequences of taking and refusing the test substantially as set out in subsection 1202(d) of this title;

(C) whether the person refused to permit the test;

(D) whether the test was taken and the test results indicated that the person's alcohol concentration was ~~0.08 or more, or 0.02 or more for a violation of subsection 1201(d) of this title, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4)~~ above a legal limit specified in subsection 1201(a) or (d) of this title, at the time of operating, attempting to operate, or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable, and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the department of public safety shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

(E) whether the requirements of section 1202 of this title were complied with.

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

any other evidence at the final hearing, and all other evidence shall be inadmissible.

(i) Finding by the court. The court shall electronically forward a report of the hearing to the commissioner. Upon a finding by the court that the law enforcement 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, or upon a finding by the court that the law enforcement 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, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4)~~ above a legal limit specified in subsection 1201(a) or (d) of this title, at the time the person was operating, attempting to operate, or in actual physical control, the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle shall be suspended or shall remain suspended for the required term and until the person complies with section 1209a of this title. Upon a

finding in favor of the person, the commissioner shall cause the suspension to be canceled and removed from the record, without payment of any fee.

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(m) Second and subsequent suspensions. For a second suspension under this 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 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.

(n) Presumption. In a proceeding under this section, if at any time within two hours of operating, attempting to operate, or being in actual physical control of a vehicle a person had an alcohol concentration of ~~0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision~~

~~4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4)~~ above a legal limit specified in subsection 1201(a) or (d) of this title, it shall be a rebuttable presumption that the person's alcohol concentration was ~~0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, respectively,~~ above the applicable limit at the time of operating, attempting to operate, or being in actual physical control.

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Sec. 8. EFFECTIVE DATE AND TRANSITION RULE

This act shall take effect on July 1, 2012. The provisions of this act relating to ignition interlock restricted driver's licenses shall apply to ignition interlock RDLs issued on or after the effective date of this act.