

1 H.501

2 Introduced by Representative Potter of Clarendon

3 Referred to Committee on

4 Date:

5 Subject: Motor vehicles; operating under the influence of drugs

6 Statement of purpose of bill as introduced: This bill proposes the following
7 changes related to operating a motor vehicle while under the influence of
8 drugs:

9 (1) The bill proposes to broaden the definition of “drug” for purposes of the
10 prohibition on driving under the influence of a drug.

11 (2) The bill proposes to prohibit operation of a vehicle while under the
12 influence of a drug to the slightest degree, and provide an affirmative defense
13 if the driver has taken medication pursuant to a valid prescription. Current law
14 prohibits operation while under the influence to a degree which renders the
15 person incapable of driving safely.

16 (3) The bill prohibits a person from operating a motor vehicle if the person
17 has any detectable amount of any of the following drugs in his or her blood:

18 (A) cocaine or any of its metabolites;

19 (B) methamphetamine;

20 (C) 3,4-methylenedioxymethamphetamine;

21 (D) bufotenine;

1 (E) lysergic acid diethylamide;

2 (F) mescaline, in any form, including mescaline contained in peyote,
3 obtained from peyote, or chemically synthesized;

4 (G) gamma-hydroxybutyric acid, gamma-butyrolactone, and
5 1,4-butanediol;

6 (H) opium and substances derived from opium, and any salt, compound,
7 derivative, or preparation of opium or substances derived from opium;

8 (I) heroin;

9 (J) psilocybin;

10 (K) 1,1-difluoroethane; or

11 (L) delta-9-tetrahydrocannabinol.

12 (4) With respect to the drugs in (3), the bill also:

13 (A) requires a health care provider who is providing health services to a
14 person in an emergency room as the result of a motor vehicle accident to report
15 to a law enforcement agency if the provider becomes aware that the person has
16 any detectable amount of one of the listed drugs in his or her system; and

17 (B) establishes a civil suspension for operating a vehicle with any
18 detectable amount of one of the listed drugs in the operator's blood.

19 An act relating to operating a motor vehicle under the influence of alcohol
20 or drugs

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

2 ~~Sec. 1. 23 V.S.A. § 1200 is amended to read:~~

3 § 1200. DEFINITIONS

4 As used in this subchapter:

5 * * *

6 (2) "Drug" means:

7 ~~(A) a regulated drug as defined in 18 V.S.A. § 4201; or~~

8 ~~(B) any substance or combination of substances, other than alcohol,~~
9 ~~which affects the nervous system, brain, or muscles of a person so as to impair,~~
10 ~~noticeably and appreciably, a person's ability to drive a vehicle safely~~

11 (A) a substance recognized as a drug in the official
12 U.S. Pharmacopoeia, the official Homeopathic Pharmacopoeia, or the official
13 National Formulary or in any supplement of any of them;

14 (B) a substance intended for use in the diagnosis, cure, mitigation,
15 treatment, or prevention of disease in humans or animals;

16 (C) a substance, other than food, intended to affect the structure or
17 any function of the body of humans or animals; or

18 (D) a substance intended for use as a component of any substance
19 specified in subdivision (A), (B), or (C) of this subdivision (2).

20 * * *

1 ~~Sec. 2. 23 V.S.A. § 1201 is amended to read:~~

2 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF
3 INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL
4 REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

5 (a) A person shall not operate, attempt to operate, or be in actual physical
6 control of any vehicle on a highway:

7 (1) when the person's alcohol concentration is 0.08 or more, or 0.02 or
8 more if the person is operating a school bus as defined in subdivision 4(34) of
9 this title; ~~or~~

10 (2) when the person is under the influence of intoxicating liquor to the
11 slightest degree; ~~or~~

12 (3) when the person is under the influence of any other drug or under the
13 combined influence of alcohol and any other drug ~~to a~~ the slightest degree
14 ~~which renders the person incapable of driving safely; or~~

15 (4) when the person's alcohol concentration is 0.04 or more if the person
16 is operating a commercial motor vehicle as defined in subdivision 4103(4) of
17 this title; or

18 (5) when the person has any detectable amount of any of the following
19 drugs in his or her blood:

20 (A) cocaine or any of its metabolites;

21 (B) methamphetamine;

- 1 ~~(C) 3,4-methylenedioxymethamphetamine;~~
- 2 (D) bufotenine;
- 3 (E) lysergic acid diethylamide;
- 4 (F) mescaline, in any form, including mescaline contained in peyote,
- 5 obtained from peyote, or chemically synthesized;
- 6 (G) gamma-hydroxybutyric acid, gamma-butyrolactone, and
- 7 1,4-butanediol;
- 8 (H) opium and substances derived from opium, and any salt,
- 9 compound, derivative, or preparation of opium or substances derived from
- 10 opium;
- 11 (I) heroin;
- 12 (J) psilocybin;
- 13 (K) 1,1-difluoroethane; or
- 14 (L) delta-9-tetrahydrocannabinol.

15 * * *

16 (c) A person shall not operate, attempt to operate, or be in actual physical

17 control of any vehicle on a highway and be involved in an accident or collision

18 resulting in serious bodily injury or death to another and refuse a law

19 enforcement officer's reasonable request under the circumstances for an

20 evidentiary test where the officer has reasonable grounds to believe the person

21 has any amount of alcohol or drugs in the system.

* * *

(h) For purposes of subdivision (a)(5) of this section, the defendant may assert as an affirmative defense that he or she had the drug in his or her blood as the result of taking medication pursuant to a valid prescription.

Sec. 3. 23 V.S.A. § 1203 is amended to read:

§ 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND
VIDEOTAPE

* * *

(b) Only a physician, licensed nurse, medical technician, physician's assistant, medical technologist, or laboratory assistant acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the presence of alcohol or other drug. This limitation does not apply to the taking of a breath sample. A medical facility may charge an agency no more than \$50.00 for an evidentiary blood draw when a person has been brought to a facility for the sole purpose of a blood test.

Sec. 4. 23 V.S.A. § 1203b is amended to read:

§ 1203b. DUTY TO REPORT BLOOD TEST RESULTS

(a) Notwithstanding any law or court rule to the contrary, if a health care provider who is providing health services to a person in the emergency room of a health care facility as a result of a motor vehicle accident becomes aware as a result of any blood test performed in the health care facility that the person's

1 ~~blood alcohol level meets or exceeds the level prohibited by law or that the~~
2 person has in his or her blood any detectable amount of a drug listed in
3 subdivision 1201(a)(5) of this title, the health care provider shall report that
4 fact, as soon as is reasonably possible, to a law enforcement agency having
5 jurisdiction over the location where the accident occurred.

6 * * *

7 Sec. 5. 23 V.S.A. § 1205 is amended to read:

8 § 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

9 (a) Refusal; alcohol concentration above legal limits; suspension periods.

10 * * *

11 (4) Upon affidavit of a law enforcement officer that the officer had
12 reasonable grounds to believe that the person was operating, attempting to
13 operate, or in actual physical control of a vehicle in violation of section 1201
14 of this title and that the person had in his or her blood any detectable amount of
15 a drug listed in subdivision 1201(a)(5) of this title at the time of operating,
16 attempting to operate, or being in actual physical control, the Commissioner
17 shall suspend the person's operating license or nonresident operating privilege
18 or the privilege of an unlicensed operator to operate a vehicle for a period of
19 90 days until the person complies with section 1209a of this title.

20 (b) Form of officer's affidavit. A law enforcement officer's affidavit in
21 support of a suspension under this section shall be in a standardized form for

1 ~~use throughout the state and shall be sufficient if it contains the following~~
2 statements:

3 * * *

4 (5)(A) The person refused to submit to an evidentiary test;

5 (B) The person had in his or her blood any detectable amount of a
6 drug listed in subdivision 1201(a)(5) of this title; or

7 (C) The officer obtained an evidentiary test (noting the time and date
8 the test was taken) and the test indicated that the person's alcohol
9 concentration was above a legal limit specified in subsection 1201(a) or (d) of
10 this title, or the person refused to submit to an evidentiary test.

11 * * *

12 Sec. 6. EFFECTIVE DATE

13 ~~This act shall take effect on passage.~~

Sec. 1. INTENT

It is the intent of the General Assembly that 23 V.S.A. § 1201(a)(3) as amended by this act be construed in the same manner that the Vermont Supreme Court has construed 23 V.S.A. § 1201(a)(2). In cases such as State v. Schmitt, 150 Vt. 503, 508 (1988) and State v. Storrs, 105 Vt. 180, 185 (1933), the Court has said that "under the influence of intoxicating liquor" means that a person's full mental or physical abilities are diminished, impaired, or affected in the slightest degree by intoxicating liquor. It is the intent of the

General Assembly that the words “under the influence of any other drug or under the combined influence of alcohol and any other drug” in 23 V.S.A. § 1201(a)(3) be interpreted in the same manner.

Sec. 2. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL
REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person’s alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is 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;~~ or

(4) when the person’s alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

* * *

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.