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H.527

Introduced by Representatives LaLonde of South Burlington, Conquest of
Newbury, Head of South Burlington, Jewett of Ripton, Pugh of
South Burlington, and Townsend of South Burlington

Referred to Committee on

Date:

Subject: Motor vehicles; distracted driving; DUI Enforcement Special Fund

Statement of purpose of bill as introduced: This bill proposes to:

(1) eliminate an exception to the State's law prohibiting handheld use of portable electronic devices, expand the assessment of points for violations of this law, and require the Commissioner of Motor Vehicles to recall for 90 days a minor's learner's permit or junior operator's license following a second or subsequent conviction for violating the law prohibiting minors from using a portable electronic device while operating a motor vehicle;

(2) establish that a person operating a motor vehicle on the highways of this State impliedly consents to an enforcement officer's search of his or her portable electronic device for the limited purpose of enabling the officer to determine a violation of distracted driving laws, and specifies the admissibility of evidence obtained from a consensual search;

1 (3) expand the State’s law prohibiting texting while driving to include
2 voice-activated composing or sending of electronic communications and
3 clarify its application to the reading of draft communications;

4 (4) amend the law creating the State’s DUI Enforcement Special Fund in
5 order to rename the Fund and expand the purpose of the Fund to include
6 expenditures to support enforcement of the State’s distracted driving laws, and
7 make related conforming changes.

8 An act relating to amended distracted driving laws

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

10 * * * Handheld Use of Portable Electronic Devices * * *

11 Sec. 1. 23 V.S.A. § 1095b is amended to read:

12 § 1095b. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE

13 PROHIBITED

14 (a) Definition. As used in this section, “hands-free use” means the use of a
15 portable electronic device without use of either hand by employing an internal
16 feature of, or an attachment to, the device.

17 (b) Use of handheld portable electronic device prohibited.

18 (1) A person shall not use a portable electronic device while operating a
19 moving motor vehicle in a place open temporarily or permanently to public or
20 general circulation of vehicles.

1 (2) In addition, a person shall not use a portable electronic device while
2 operating a motor vehicle on a public highway in Vermont, including while the
3 vehicle is stationary unless otherwise provided in this section. As used in this
4 subdivision (b)(2):

5 (A) “Public highway” means a State or municipal highway as defined
6 in 19 V.S.A. § 1(12).

7 (B) “Operating” means operating a motor vehicle on a public
8 highway, including while temporarily stationary because of traffic, a traffic
9 control device, or other temporary delays. “Operating” does not include
10 operating a motor vehicle with or without the motor running when the operator
11 has moved the vehicle to the side of or off the public highway and has halted in
12 a location where the vehicle can safely and lawfully remain stationary.

13 (3) The prohibitions of this subsection shall not apply:

14 (A) To hands-free use.

15 (B) ~~To activation or deactivation of hands-free use, as long as any~~
16 ~~accessory for securely mounting the device is not affixed to the windshield in~~
17 ~~violation of section 1125 of this title. [Repealed.]~~

18 (C) When use of a portable electronic device is necessary for a
19 person to communicate with law enforcement or emergency service personnel
20 under emergency circumstances.

1 (D) To use of an ignition interlock device, as defined in section 1200
2 of this title.

3 (E) To use of a global positioning or navigation system if it is
4 installed by the manufacturer or securely mounted in the vehicle in a manner
5 that does not violate section 1125 of this title. As used in this subdivision
6 (b)(3)(E), “securely mounted” means the device is placed in an accessory or
7 location in the vehicle, other than the operator’s hands, where the device will
8 remain stationary under typical driving conditions.

9 (c) Enforcement; implied consent.

10 (1) Every person who operates a vehicle on a highway in this State is
11 deemed to give an enforcement officer consent to search a portable electronic
12 device in the operator’s possession or control for the limited purpose of
13 enabling the officer to ascertain whether the operator violated subsection (b) of
14 this section, if the officer has reasonable grounds to believe that such violation
15 occurred.

16 (2) At the time of requesting a search under this subsection, an
17 enforcement officer shall inform the operator:

18 (A) that Vermont law authorizes an enforcement officer to request
19 search of a portable electronic device to ascertain whether an operator violated
20 the prohibition on handheld use of a portable electronic device while
21 driving; and

1 (B) if the officer's request is reasonable and consent to search is
2 refused, the operator shall be subject to a penalty for the refusal that is
3 equivalent to the penalty for violating the law prohibiting handheld use of a
4 portable electronic device while driving.

5 (3) If an operator refuses to permit the officer to search the portable
6 electronic device as authorized in subdivision (1) of this subsection, the officer
7 shall not search the device. However, such refusal shall constitute a traffic
8 violation and subject the person to the penalties prescribed in subsection (e) of
9 this section.

10 (4) Nothing in this subsection (c) shall affect the right of an enforcement
11 officer to apply for a search warrant to search a portable electronic device, or
12 affect the admissibility of evidence obtained from the execution of a warrant.

13 (d) In establishing a prima facie case against an operator cited for violating
14 subsection (b) of this section, the court shall accept as evidence an officer's
15 testimony as to information obtained during a consensual roadside search of
16 the operator's portable electronic device, provided that the officer had
17 reasonable grounds to believe that the operator violated the prohibition of
18 subsection (b) of this section.

19 (e) Penalties.

20 (1) A person who violates this section commits a traffic violation and
21 shall be subject to a fine of not less than \$100.00 and not more than \$200.00

1 for a first violation, and of not less than \$250.00 and not more than \$500.00 for
2 a second or subsequent violation within any two-year period.

3 (2) A person convicted of violating this section while operating within a
4 ~~properly designated work zone in which construction, maintenance, or utility~~
5 ~~personnel are present~~ the following areas shall have two points assessed
6 against his or her driving record for a first conviction and five points assessed
7 for a second or subsequent conviction:

8 (A) a properly designated work zone in which construction,
9 maintenance, or utility personnel are present; or

10 (B) a school zone marked with warning signs conforming to the
11 Manual on Uniform Traffic Control Devices.

12 (3) A person convicted of violating this section outside ~~a work zone in~~
13 ~~which personnel are present~~ the areas designated in subdivision (2) of this
14 subsection shall not have points assessed against his or her driving record for a
15 first violation, and shall have two points assessed against his or her driving
16 record for a second or subsequent violation.

17 ~~(d)~~(f) Relationship with other laws.

18 (1) Operators of commercial motor vehicles shall be governed by the
19 provisions of chapter 39 of this title (Commercial Driver License Act) instead
20 of the provisions of this chapter with respect to the handheld use of mobile
21 telephones and texting while operating a commercial motor vehicle.

1 (2) A person shall not be issued more than one complaint for any
2 violation of this section, section 1095a of this title (junior operator use of
3 portable electronic devices), or section 1099 of this title (texting prohibited)
4 that arises from the same incident.

5 * * * Texting * * *

6 Sec. 2. 23 V.S.A. § 1099 is amended to read:

7 § 1099. TEXTING PROHIBITED

8 (a) As used in this section, “texting” means the reading of draft or complete
9 electronic communications, or the manual or voice-activated composing or
10 sending of electronic communications, including text messages, instant
11 messages, or e-mails, using a portable electronic device as defined in
12 subdivision 4(82) of this title. Use of a global positioning or navigation system
13 shall be governed by section 1095b of this title.

14 (b)(1) A person shall not engage in texting while operating a moving motor
15 vehicle in a place open temporarily or permanently to public or general
16 circulation of vehicles.

17 (2) In addition, a person shall not engage in texting while operating a
18 motor vehicle on a public highway in Vermont, including while the vehicle is
19 stationary unless otherwise provided under this section. As used in this
20 subdivision (b)(2):

1 (A) “Public highway” means a State or municipal highway as defined
2 in 19 V.S.A. § 1(12).

3 (B) “Operating” means operating a motor vehicle on a public
4 highway, including while temporarily stationary because of traffic, a traffic
5 control device, or other temporary delays. “Operating” does not include
6 operating a motor vehicle with or without the motor running when the operator
7 has moved the vehicle to the side of or off the public highway and has halted in
8 a location where the vehicle can safely and lawfully remain stationary.

9 (c) Enforcement; implied consent.

10 (1) Every person who operates a vehicle on a highway in this State is
11 deemed to give an enforcement officer consent to search a portable electronic
12 device in the operator’s possession or control for the limited purpose of
13 enabling the officer to ascertain whether the operator violated subsection (b) of
14 this section, if the officer has reasonable grounds to believe that such violation
15 occurred.

16 (2) At the time of requesting a search under this subsection, an
17 enforcement officer shall inform the operator:

18 (A) that Vermont law authorizes an enforcement officer to request
19 search of a portable electronic device to ascertain whether an operator violated
20 the prohibition on texting while driving; and

1 (B) if the officer's request is reasonable and consent to search is
2 refused, the operator shall be subject to a penalty for the refusal that is
3 equivalent to the penalty for violating the law prohibiting texting while
4 driving.

5 (3) If an operator refuses to permit the officer to search the portable
6 electronic device as authorized in subdivision (1) of this subsection, the officer
7 shall not search the device. However, such refusal shall constitute a traffic
8 violation and subject the person to the penalties prescribed in subsection (e) of
9 this section and to the assessment of points against his or her driving record.

10 (4) Nothing in this subsection shall affect the right of an enforcement
11 officer to apply for a search warrant to search a portable electronic device, or
12 the admissibility of evidence obtained from the execution of a warrant.

13 (d) In establishing a prima facie case against an operator cited for violating
14 subsection (b) of this section, the court shall accept as evidence an officer's
15 testimony as to information obtained during a consensual roadside search of
16 the operator's portable electronic device, provided that the officer had
17 reasonable grounds to believe that the operator violated the prohibition of
18 subsection (b) of this section.

19 (e) A person who violates this section commits a traffic violation as defined
20 in section 2302 of this title and shall be subject to a penalty of not less than
21 \$100.00 and not more than \$200.00 for a first violation, and of not less than

1 \$250.00 and not more than \$500.00 for a second or subsequent violation within
2 any two-year period.

3 Sec. 3. 23 V.S.A. § 1095a is amended to read:

4 § 1095a. ~~JUNIOR OPERATOR~~ MINOR'S USE OF PORTABLE
5 ELECTRONIC DEVICES

6 (a) A person under 18 years of age shall not use any portable electronic
7 device as defined in subdivision 4(82) of this title while operating a moving
8 motor vehicle in a place open temporarily or permanently to public or general
9 circulation of vehicles.

10 (b) In addition, a person under 18 years of age shall not use any portable
11 electronic device while operating a motor vehicle on a public highway,
12 including while the vehicle is stationary unless otherwise provided in this
13 section. As used in this subsection:

14 (1) "Public highway" means a State or municipal highway as defined in
15 19 V.S.A. § 1(12).

16 (2) "Operating" means operating a motor vehicle on a public highway,
17 including while temporarily stationary because of traffic, a traffic control
18 device, or other temporary delays. "Operating" does not include operating a
19 motor vehicle with or without the motor running when the operator has moved
20 the vehicle to the side of or off the public highway and has halted in a location
21 where the vehicle can safely and lawfully remain stationary.

1 (c) The prohibitions of this section shall not apply when use of a portable
2 electronic device is necessary for a person to communicate with law
3 enforcement or emergency service personnel under emergency circumstances.

4 (d) If an enforcement officer has reasonable grounds to believe that an
5 operator has violated subsection (a) or (b) of this section, the operator shall be
6 subject to the same implied consent to search and evidentiary provisions
7 specified in subsections 1099(c) and (d) of this title, with respect to any
8 portable electronic device in the operator's possession or control. The penalty
9 for a refusal of an officer's reasonable request to search shall be equivalent to
10 the penalty for a violation of subsection (a) or (b) of this section.

11 Sec. 4. 23 V.S.A. § 607a is amended to read:

12 § 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S
13 LICENSE

14 (a)(1) A learner's permit or junior operator's license shall contain an
15 admonition that it is recallable and that the later procurement of an operator's
16 license is conditional on the establishment of a record which is satisfactory to
17 the Commissioner and showing compliance with the motor vehicle laws of this
18 and other states.

19 (2) The Commissioner may recall any permit or license issued to a
20 minor;

1 (A) whenever he or she is satisfied, from information provided by
2 a credible person and upon investigation, that the operator is mentally or
3 physically unfit or, because of his or her habits or record as to accidents or
4 convictions, is unsafe to be trusted with the operation of motor
5 vehicles. ~~On; or~~

6 (B) for up to 30 days on recommendation of a diversion or reparative
7 board, ~~the Commissioner may recall the learner's permit or junior operator's~~
8 ~~license of a person~~ if the minor is enrolled in a diversion or reparative program
9 ~~for up to 30 days.~~

10 (3) The Commissioner shall ~~also~~ recall any learner's permit or junior
11 operator's license issued to a minor for:

12 (A) 30 days ~~when an operator is adjudicated~~ following conviction of
13 a single texting violation under section 1099 of this title;:

14 (B) 90 days following ~~adjudication of~~ conviction of a single speeding
15 violation resulting in a three-point assessment;:

16 (C) 90 days when the minor has accumulated a total of six points ~~has~~
17 ~~been accumulated,~~ against his or her driving record;

18 (D) 90 days following conviction of a second or subsequent violation
19 of section 1095a of this chapter; or

20 (E) 90 days ~~when an operator is adjudicated~~ following conviction of
21 a violation of subsection 614(c) or 615(a) of this title.

1 (2) If an enforcement officer has reasonable grounds to believe that a
2 commercial motor vehicle operator has violated subdivision (1) of this
3 subsection, the operator shall be subject to the same implied consent to search
4 and evidentiary provisions specified in subsections 1099(c) and (d) of this title,
5 with respect to any portable electronic device in the operator's possession or
6 control. The penalty for a refusal of an officer's reasonable request to search
7 shall be equivalent to the penalty for a violation of subdivision (1) of this
8 subsection.

9 (3) ~~No~~ A person may shall not be issued more than one traffic
10 ~~complaints alleging a~~ complaint for any violation of this section ~~and a violation~~
11 ~~of section 1099~~ or section 1095a or 1099 of this title arising from the same
12 incident.

13 (c)(1) General Prohibition on Use of Handheld Mobile Telephones. No
14 operator shall use a handheld mobile telephone while driving a commercial
15 motor vehicle:-

16 ~~(2) Exception. Use~~ except that use of a handheld mobile telephone is
17 permissible by operators of a commercial motor vehicle when necessary to
18 communicate with law enforcement officials or other emergency services.

19 (2) If an enforcement officer has reasonable grounds to believe that a
20 commercial motor vehicle operator has violated subdivision (1) of this
21 subsection, the operator shall be subject to the same implied consent to search

1 and evidentiary provisions specified in subsections 1095b(c) and (d) of this
2 title, with respect to any handheld mobile telephone in the operator's
3 possession or control. The penalty for a refusal of an officer's reasonable
4 request to search shall be equivalent to the penalty for a violation of
5 subdivision (1) of this subsection.

6 (3) A person shall not be issued more than one traffic complaint for any
7 violation of this section or section 1095a or 1099 of this title arising from the
8 same incident.

9 (d) Motor Carriers.

10 (1) A motor carrier shall not allow or require its drivers to engage in
11 texting while driving a commercial motor vehicle.

12 (2) A motor carrier shall not allow or require its drivers to use a
13 handheld mobile telephone while driving a commercial motor vehicle.

14 * * * DUI and Distracted Driving Enforcement Special Fund * * *

15 Sec. 6. 23 V.S.A. § 1220a is amended to read:

16 § 1220a. DUI AND DISTRACTED DRIVING ENFORCEMENT SPECIAL
17 FUND

18 (a) There is created a DUI and Distracted Driving Enforcement Special
19 Fund which shall be a special fund established and managed pursuant to
20 32 V.S.A. chapter 7, subchapter 5. The ~~DUI Enforcement~~ Special Fund shall

1 be a continuation of and successor to the DUI Enforcement Special Fund
2 established under subsection 1205(r) of this title.

3 (b) The DUI and Distracted Driving Enforcement Special Fund shall
4 consist of:

5 (1) receipts from the surcharges assessed under section 206 and
6 subsections 674(i), 1091(d), 1094(f), 1128(d), 1133(d), 1205(r), and 1210(k) of
7 this title;

8 (2) ~~beginning in fiscal year 2000 and thereafter~~, the first \$150,000.00 of
9 revenues collected from fines imposed under chapter 13, subchapter 13 ~~of~~
10 ~~chapter 13~~ of this title pertaining to DUI related offenses;

11 (3) notwithstanding 19 V.S.A. § 11(6), all fines collected from penalties
12 imposed under sections 1095, 1095a, 1095b, 1099, and 4125 of this title,
13 except for the \$12.50 administrative charge specified in 13 V.S.A. § 7252;

14 (3)(4) beginning May 1, 2013 and thereafter, \$0.0038 per gallon of the
15 revenues raised by the motor fuel tax on gasoline imposed by chapter 28 of this
16 title; and

17 (4)(5) any additional funds transferred or appropriated by the General
18 Assembly.

19 (c) The DUI and Distracted Driving Enforcement Special Fund shall be
20 used for the implementation and enforcement of this subchapter and of sections
21 1095, 1095a, 1095b, 1099, and 4125 of this title for purposes specified and in

1 amounts appropriated by the General Assembly. Effort shall be given to
2 awarding grants to municipalities or law enforcement agencies for innovative
3 programs designed to reduce DUI and distracted driving offenses, and priority
4 shall be given to grants requested jointly by more than one law enforcement
5 agency or municipality.

6 Sec. 7. REPLACEMENTS; CONFORMING CHANGES

7 (a) In 23 V.S.A. §§ 206, 674, 1091, 1094, 1128, 1133, and 1210, the phrase
8 “DUI Enforcement Fund” is hereby replaced with “DUI and Distracted
9 Driving Enforcement Special Fund.”

10 (b) In 23 V.S.A. § 1205, the phrase “DUI Enforcement Special Fund” is
11 hereby replaced with “DUI and Distracted Driving Enforcement Special
12 Fund.”

13 * * * Effective Date * * *

14 Sec. 8. EFFECTIVE DATE

15 This act shall take effect on July 1, 2016.