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H.511

Introduced by Committee on Transportation

Date:

Subject: Motor vehicles; driving under the influence; open container; learner's permits; seatbelts; incident clearance; liability

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

(1) subject a person who operates any vehicle the operation of which requires a school bus endorsement to the 0.02 blood alcohol limit that applies to persons operating a school bus;

(2) make Vermont's implied consent statute consistent with the U.S. Supreme Court's decision in *Birchfield v. North Dakota* by providing that a warrant is required before a blood test can be given to a person suspected of DUI and that a person cannot be criminally prosecuted for refusing to submit to the blood test;

(3) impose additional penalties for operating a vehicle under the influence of alcohol or drugs with a minor in the vehicle;

(4) allow additional professionals to conduct an evidentiary blood draw, and allow a medical facility or business to charge an agency not more than \$75.00 for an evidentiary blood draw;

1 (5) prohibit operation of a motor vehicle while possessing or operating
2 under the influence of drugs for individuals under 21 years of age and
3 imposing civil penalties for such a violation;

4 (6) establish civil penalties for consuming marijuana or having an open
5 container of marijuana while in an operating motor vehicle;

6 (7) require that persons qualified to ride beside an individual operating a
7 motor vehicle under a learner's permit not be under the influence of alcohol or
8 drugs during such operation;

9 (8) eliminate the requirement that a person who violates the adult
10 seatbelt law be ticketed for the primary violation that gave rise to the traffic
11 stop; and

12 (9) make miscellaneous changes to a law governing the removal of
13 vehicles from a highway under specified circumstances.

14 An act relating to highway safety

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

16 * * * Driving Under the Influence * * *

17 Sec. 1. 23 V.S.A. § 1201(a) is amended to read:

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

1 (1) when the person's alcohol concentration is 0.08 or more, or 0.02 or
2 more if the person is operating a ~~school bus as defined in subdivision 4(34) of~~
3 ~~this title~~ vehicle when the operation requires an operator's license with a
4 school bus endorsement; or

5 * * *

6 Sec. 2. 23 V.S.A. § 1202 is amended to read:

7 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
8 ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

9 (a)(1) Implied consent. Every person who operates, attempts to operate, or
10 is in actual physical control of any vehicle on a highway in this State is deemed
11 to have given consent to an evidentiary test of that person's breath for the
12 purpose of determining the person's alcohol concentration or the presence of
13 other drug in the blood. The test shall be administered at the direction of a law
14 enforcement officer.

15 (2) Blood test. If breath testing equipment is not reasonably available or
16 if the officer has reason to believe that the person is unable to give a sufficient
17 sample of breath for testing or if the law enforcement officer has reasonable
18 grounds to believe that the person is under the influence of a drug other than
19 alcohol, the person is deemed to have given consent to the taking of an
20 evidentiary sample of blood. If in the officer's opinion the person is incapable
21 of decision or unconscious or dead, it is deemed that the person's consent is

1 given and a sample of blood shall be taken. A blood test sought pursuant to
2 this subdivision (2) shall be obtained pursuant to subsection (f) of this section.

3 (3) Evidentiary test. The evidentiary test shall be required of a person
4 when a law enforcement officer has reasonable grounds to believe that the
5 person was operating, attempting to operate, or in actual physical control of a
6 vehicle in violation of section 1201 of this title.

7 (4) Fatal collision or incident resulting in serious bodily injury. The
8 evidentiary test shall also be required if the person is the surviving operator of
9 a motor vehicle involved in a fatal incident or collision or an incident or
10 collision resulting in serious bodily injury and the law enforcement officer has
11 reasonable grounds to believe that the person has any amount of alcohol or
12 other drug in his or her system.

13 (b) ~~If the person refuses to submit to an evidentiary test it shall not be~~
14 ~~given, except as provided in subsection (f) of this section, but the~~ A refusal to
15 take a breath test may be introduced as evidence in a criminal proceeding.

16 * * *

17 (f) If a blood test is sought from a person pursuant to subdivision (a)(2) of
18 this section, or if a person who has been involved in an accident or collision
19 resulting in serious bodily injury or death to another refuses an evidentiary test,
20 a law enforcement officer may apply for a search warrant pursuant to Rule 41
21 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an

1 evidentiary test. If a blood sample is obtained by search warrant, the fact of
2 the refusal may still be introduced in evidence, in addition to the results of the
3 evidentiary test. Once a law enforcement official begins the application
4 process for a search warrant, the law enforcement official is not obligated to
5 discontinue the process even if the person later agrees to provide an
6 evidentiary breath sample. The limitation created by Rule 41(g) of the
7 Vermont Rules of Criminal Procedure regarding blood specimens shall not
8 apply to search warrants authorized by this section.

9 * * *

10 Sec. 3. 23 V.S.A. § 1210(1) is added to read:

11 (1) Minor in vehicle. A person who violates section 1201 of this title while
12 a minor is in the person's vehicle shall, in addition to any other penalty
13 imposed by law, be:

14 (1) fined not more than \$300.00 or imprisoned for not more than six
15 months, or both; or

16 (2) fined not more than \$5,000.00 or imprisoned for not more than
17 10 years, or both, if the violation results in the death of or serious bodily injury
18 to the minor.

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

2 § 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND
3 VIDEOTAPE

4 (a) A breath test shall be administered only by a person who has been
5 certified by the Vermont Criminal Justice Training Council to operate the
6 breath testing equipment being employed. In any proceeding under this
7 subchapter, a person's testimony that he or she is certified to operate the breath
8 testing equipment employed shall be prima facie evidence of that fact.

9 (b) Only a physician, licensed nurse, medical technician, physician
10 assistant, medical technologist, ~~or~~ laboratory assistant, intermediate or
11 advanced emergency medical technician, or paramedic acting at the request of
12 a law enforcement officer may withdraw blood for the purpose of determining
13 the presence of alcohol or ~~other~~ another drug. This limitation does not apply to
14 the taking of a breath sample. A medical facility or business may charge an
15 agency not more than \$75.00 for an evidentiary blood draw when a person is
16 brought to a facility for the sole purpose of a blood test, or when an emergency
17 medical technician or paramedic draws an evidentiary blood sample.

18 * * *

1 Sec. 5. 23 V.S.A. § 1217 is added to read:

2 § 1217. PERSONS UNDER 21 YEARS OF AGE; OPERATING A
3 VEHICLE WHILE IN POSSESSION OR UNDER THE
4 INFLUENCE OF A DRUG; CIVIL PENALTIES

5 (a) A person under 21 years of age shall not operate, attempt to operate, or
6 be in actual physical control of a vehicle on a highway while:

7 (1) under the influence of a drug; or

8 (2) in possession of a regulated drug as defined in 18 V.S.A. § 4201,
9 unless the person obtained possession with a valid prescription or registration
10 card, or the person is lawfully transporting or delivering the drug.

11 (b) A violation of subsection (a) of this section shall be a civil offense
12 subject to the jurisdiction of the Judicial Bureau and subject to the following
13 sanctions:

14 (1) For a first violation, the Commissioner shall suspend the person's
15 license to operate a motor vehicle for a period of six months.

16 (2) For a second or subsequent violation, the Commissioner shall
17 suspend the person's license to operate a motor vehicle for a period of one year
18 or until the person reaches 21 years of age, whichever is longer.

19 (3) Any suspension imposed pursuant to this section shall run
20 concurrently with any suspension imposed pursuant to section 1205, 1206,
21 1208, or 1216 of this title, any suspension imposed by another jurisdiction

1 under comparable statutes, or a suspension resulting from a conviction for a
2 violation of section 1091 of this title if it arose from the same incident. A
3 person shall receive credit for any elapsed period of a suspension served in
4 Vermont against a later suspension imposed in Vermont.

5 (c) No fine shall be imposed and no points shall be assessed for a violation
6 of this section.

7 (d) Any civil penalty imposed by this section shall not bar prosecution for
8 any crime arising out of the same violation, including a prosecution under
9 section 1201 of this title.

10 (e) As used in subdivision (a) of this subsection, “under the influence of a
11 drug” shall have the same meaning as in subsection 1201(h) of this title.

12 Sec. 6. 23 V.S.A. § 1134 is amended to read:

13 § 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR
14 POSSESSION OF ALCOHOL OR MARIJUANA

15 (a) A person shall not consume alcoholic beverages or marijuana while
16 operating a motor vehicle on a public highway. As used in this section,
17 “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as
18 defined in section 1200 of this title.

19 (b) A person operating a motor vehicle on a public highway shall not
20 possess any open container which contains alcoholic beverages or marijuana in
21 the passenger area of the motor vehicle.

1 (c) As used in this section, “passenger area” shall mean the area designed
2 to seat the operator and passengers while the motor vehicle is in operation and
3 any area that is readily accessible to the operator or passengers while in their
4 seating positions, including the glove compartment, unless the glove
5 compartment is locked. In a motor vehicle that is not equipped with a trunk,
6 the term shall exclude the area behind the last upright seat or any area not
7 normally occupied by the operator or passengers.

8 (d) A person who violates subsection (a) of this section shall be assessed a
9 civil penalty of not more than \$500.00. A person who violates subsection (b)
10 of this section shall be assessed a civil penalty of not more than ~~\$25.00~~ \$50.00.
11 A person adjudicated and assessed a civil penalty for an offense under
12 subsection (a) of this section shall not be subject to a civil violation for the
13 same actions under subsection (b) of this section.

14 Sec. 7. 23 V.S.A. § 1134a is amended to read:

15 § 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR

16 POSSESSION OF ALCOHOL OR MARIJUANA

17 (a) Except as provided in subsection (c) of this section, a passenger in a
18 motor vehicle shall not consume alcoholic beverages or marijuana or possess
19 any open container which contains alcoholic beverages or marijuana in the
20 passenger area of any motor vehicle on a public highway. As used in this

1 section, “alcoholic beverages” shall have the same meaning as “intoxicating
2 liquor” as defined in section 1200 of this title.

3 (b) As used in this section, “passenger area” shall mean the area designed
4 to seat the operator and passengers while the motor vehicle is in operation and
5 any area that is readily accessible to the operator or passengers while in their
6 seating positions, including the glove compartment, unless the glove
7 compartment is locked. In a motor vehicle that is not equipped with a trunk,
8 the term shall exclude the area behind the last upright seat or any area not
9 normally occupied by the operator or passengers.

10 (c) A person, other than the operator, may possess an open container which
11 contains alcoholic beverages in the passenger area of a motor vehicle designed,
12 maintained, or used primarily for the transportation of persons for
13 compensation or in the living quarters of a motor home or trailer coach.

14 (d) A person who violates this section shall be ~~fin~~ subject to a civil
15 penalty of not more than ~~\$25.00~~ \$50.00.

16 * * * Learner’s Permits; Supervision * * *

17 Sec. 8. 23 V.S.A. § 615(a)(1) is amended to read:

18 (a)(1)(A) An unlicensed person 15 years of age or older may operate a
19 motor vehicle if he or she possesses a valid learner’s permit issued to him or
20 her by the Commissioner, or by another jurisdiction in accordance with section

1 208 of this title, and if one of the following persons who is not under the
2 influence of alcohol or drugs rides beside him or her:

3 (i) his or her licensed parent or guardian;

4 (ii) a licensed or certified driver education instructor;

5 (iii) a licensed examiner of the Department; or

6 (iv) a licensed person at least 25 years of age ~~rides beside him~~
7 ~~or her.~~

8 (B) A person described under subdivisions (A)(i)–(iv) of this
9 subdivision (1) who, while under the influence of alcohol or drugs, rides beside
10 an individual whom the person knows to be unlicensed shall be subject to the
11 same penalties as for a violation of subsection 1130(b) of this title. A holder of
12 a learner’s permit shall not be deemed to have violated this section if a person
13 described under subdivisions (A)(i)–(iv) of this subdivision (1) rides beside
14 him or her while the person is under the influence of alcohol or drugs.

15 (C) Nothing in this section shall be construed to permit a person
16 against whom a revocation or suspension of license is in force, or a person
17 younger than 15 years of age, or a person who has been refused a license by
18 the Commissioner to operate a motor vehicle.

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* * * Seat Belts * * *

Sec. 9. 23 V.S.A. § 1259 is amended to read:

§ 1259. SAFETY BELTS; PERSONS 18 YEARS OF AGE ~~18 OR OVER~~
OLDER

* * *

(e) This section may be enforced only if a law enforcement officer has
detained the operator of a motor vehicle for another suspected traffic violation.
~~An operator shall not be subject to the penalty established in this section unless
the operator is required to pay a penalty for the primary violation.~~

(f) The penalty for violation of this section shall be as follows:

- (1) \$25.00 for a first violation;
- (2) \$50.00 for a second violation;
- (3) \$100.00 for third and subsequent violations.

* * * Incident Clearance; Duties; Limitation on Liability * * *

Sec. 10. 23 V.S.A. § 1102 is amended to read:

§ 1102. REMOVAL OF STOPPED VEHICLES

(a) ~~Any~~ Subject to subsection (c) of this section, any enforcement officer is
authorized to:

(1) ~~move~~ cause the removal of a vehicle stopped, parked, or standing
contrary to section 1101 of this title, or ~~to~~ require the driver or other person in

1 charge to move the vehicle to a safe position off the ~~paved~~ or main-traveled
2 part of the highway;

3 (2) ~~remove~~ cause the removal of an unattended vehicle ~~which~~ or cargo
4 that is an obstruction to traffic or to maintenance of the highway to a garage or
5 other place of safety;

6 (3) ~~remove~~ cause the removal of any vehicle found upon a highway, as
7 defined in 19 V.S.A. § 1, to a garage or other place of safety when:

8 (A) the officer is informed by a reliable source that the vehicle has
9 been stolen or taken without the consent of its owner; or

10 (B) the person in charge of the vehicle is unable to provide for its
11 removal; or

12 (C) the person in charge of the vehicle has been arrested under
13 circumstances ~~which~~ that require his or her immediate removal from control of
14 the vehicle.

15 (b) In the case of a crash involving a serious bodily injury or fatality,
16 clearance of the crash scene may be delayed until the crash investigation is
17 completed.

18 (c) A towing operator shall undertake removal of a vehicle or cargo under
19 this section only if summoned to the scene by the vehicle owner or vehicle
20 operator, or an enforcement officer, and is authorized to perform the removal
21 as follows:

1 (1) The owner or operator of the vehicle or cargo being removed shall
2 summon to the scene the towing operator of the owner's or operator's choice in
3 consultation with the enforcement officer and designate the location where the
4 vehicle or cargo is to be removed.

5 (2) The provisions of subdivision (1) of this subsection shall not apply
6 when the owner or operator is incapacitated or otherwise unable to summon a
7 towing operator, does not make a timely choice of a towing operator, or defers
8 to the enforcement officer's selection of the towing operator.

9 (3) The authority provided to the owner or operator under subdivision
10 (1) of this subsection may be superseded by the enforcement officer if the
11 towing operator of choice cannot respond to the scene in a timely fashion and
12 the vehicle or cargo is a hazard, impedes the flow of traffic, or may not legally
13 remain in its location in the opinion of the enforcement officer.

14 (d)(1) Except as provided in subdivision (2) of this subsection, the vehicle
15 owner and the motor carrier, if any, shall be responsible to the law enforcement
16 agency or towing operator for reasonable costs incurred solely in the removal
17 and subsequent disposition of the vehicle or cargo under this section.

18 (2) When applicable, the provisions of 10 V.S.A. § 6615 (liability for
19 release of hazardous materials) shall apply in lieu of this subsection.

20 (e) Except for intentionally inflicted damage or gross negligence, a person
21 who moves a vehicle or cargo or causes a vehicle or cargo to be moved in

1 accordance with this section shall not be liable for damage incurred during the
2 move.

3 (f) Any enforcement officer causing the removal of a motor vehicle under
4 this section shall notify the Department as to the location and date of discovery
5 of the vehicle, date of removal of the vehicle, name of the towing service
6 removing the vehicle, and place of storage. The officer shall record and
7 remove from the vehicle, if possible, any information ~~which~~ that might aid the
8 Department in ascertaining the ownership of the vehicle and forward ~~it~~ the
9 information to the Department. A motor vehicle towed under authority of this
10 section may qualify as an abandoned motor vehicle under subchapter 7 of
11 chapter 21 of this title.

12 * * * Effective Dates * * *

13 Sec. 11. EFFECTIVE DATES

14 (a) This section and Secs. 1 (operating under the influence), 2 (implied
15 consent), 3 (DUI penalties), 6-7 (open container; marijuana), 8 (learner's
16 permits; supervision), and 10 (incident clearance) shall take effect on passage.

17 (b) Secs. 4 (evidentiary blood draws), 5 (under age 21; possession or
18 consumption of drugs), and 9 (seatbelts) shall take effect on July 1, 2017.