

1 S.291

2 Introduced by Senators Perchlik and Ingram

3 Referred to Committee on

4 Date:

5 Subject: Traffic safety; operation of a motor vehicle under the influence of  
6 alcohol; blood alcohol content

7 Statement of purpose of bill as introduced: This bill proposes to reduce the  
8 legal blood alcohol concentration limit from 0.08 percent to 0.05 percent and  
9 to require the Secretary of Transportation to conduct a public education  
10 campaign about the reduced limit, to take effect upon two bordering states  
11 enacting substantially comparable blood alcohol content limitations.

12 An act relating to lowering the blood alcohol content limit

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

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

15 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF

16 ALCOHOL OR OTHER SUBSTANCE; CRIMINAL REFUSAL;

17 ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

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



1           (2) If the person's alcohol concentration at that time was ~~0.08~~ 0.05 or  
2 more, it shall be a permissive inference that the person was under the influence  
3 of alcohol in violation of subdivision 1201(a)(2) or (3) of this title.

4           (3) If the person's alcohol concentration at any time within two hours of  
5 the alleged offense was ~~0.10~~ 0.08 or more, it shall be a permissive inference  
6 that the person was under the influence of alcohol in violation of subdivision  
7 1201(a)(2) or (3) of this title.

8           (b) The foregoing provisions shall not be construed as limiting the  
9 introduction of any other competent evidence bearing upon the question  
10 whether the person was under the influence of alcohol, nor shall they be  
11 construed as requiring that evidence of the amount of alcohol in the person's  
12 blood, breath, urine, or saliva must be presented.

13       Sec. 3. 23 V.S.A. § 1211 is amended to read:

14       § 1211. CONSTRUCTION OF CROSS REFERENCES

15           For the purposes of computing offenses under this chapter, references to  
16 section 1201 of this title shall be construed to include sections of present or  
17 prior law of this or any other jurisdiction which prohibited operating,  
18 attempting to operate, or being in actual physical control of a motor vehicle on  
19 a highway while under the influence of alcohol or drugs, or both, or while  
20 having ~~0.08~~ 0.05 percent or more by weight of alcohol in the person's blood or  
21 an alcohol concentration of ~~0.08~~ 0.05 or more.

1 Sec. 4. 23 V.S.A. § 1213 is amended to read:

2 § 1213. IGNITION INTERLOCK RESTRICTED DRIVER'S LICENSE OR  
3 CERTIFICATE; PENALTIES

4 (a)(1) A person whose license or privilege to operate is suspended or  
5 revoked under this subchapter may operate a motor vehicle, other than a  
6 commercial motor vehicle as defined in section 4103 of this title, if issued a  
7 valid ignition interlock RDL or ignition interlock certificate. Upon  
8 application, the Commissioner shall issue an ignition interlock RDL or ignition  
9 interlock certificate to a person otherwise licensed or eligible to be licensed to  
10 operate a motor vehicle if:

11 (A) the person submits a \$125.00 application fee;

12 (B) the person submits satisfactory proof of installation of an  
13 approved ignition interlock device in any motor vehicle to be operated and of  
14 financial responsibility as provided in section 801 of this title;

15 (C) at least one year has passed since the suspension or revocation  
16 was imposed if the offense involved death or serious bodily injury to a person  
17 other than the operator; and

18 (D) the applicable period set forth below has passed since the  
19 suspension or revocation was imposed if the offense involved refusal of an  
20 enforcement officer's reasonable request for an evidentiary test:

21 (i) 30 days for a first offense;

1                   (ii) 90 days for a second offense;

2                   (iii) one year for a third or subsequent offense.

3                   (2) A new ignition interlock RDL or ignition interlock certificate shall  
4                   expire at midnight on the eve of the second birthday of the applicant following  
5                   the date of issue, and may be renewed for one-year terms. The Commissioner  
6                   shall send by first class mail an application for renewal of the RDL or  
7                   certificate at least 30 days prior to the day renewal is required and shall impose  
8                   the same conditions for renewal as are required for initial issuance. The  
9                   renewal fee shall be \$125.00.

10                  (b) [Repealed.]

11                  (c) [Repealed.]

12                  (d) If a fine is to be imposed for a conviction of a violation of section 1201  
13                  of this title, upon receipt of proof of installation of an approved ignition  
14                  interlock device, the court may order that the fine of an indigent person  
15                  conditionally be reduced by one-half to defray the costs of the ignition  
16                  interlock device, subject to the person's ongoing operation under, and  
17                  compliance with the terms of, a valid ignition interlock RDL or ignition  
18                  interlock certificate as set forth in this section. In considering whether a  
19                  person's fine should be reduced under this subsection, the court shall take into  
20                  account any discount already provided by the device manufacturer or provider.

1           (e) The holder of an ignition interlock RDL or ignition interlock certificate  
2 shall pay the costs of installing, purchasing or leasing, and removing the  
3 ignition interlock device as well as calibrating the device and retrieving data  
4 from it periodically as may be specified by the Commissioner.

5           (f)(1) Prior to the issuance of an ignition interlock RDL or ignition  
6 interlock certificate under this section, the Commissioner shall notify the  
7 applicant that the period prior to eligibility for reinstatement may be extended  
8 under this subsection (f) or subsections (g)–(h) of this section.

9           (2)(A) Prior to any such extension of the reinstatement period, the  
10 ignition interlock RDL or certificate holder shall be given notice and  
11 opportunity for a hearing. Service of the notice shall be sent by first class mail  
12 to the last known address of the person. The notice shall include a factual  
13 description of the grounds for an extension, a reference to the particular law  
14 allegedly violated, and a warning that the right to a hearing will be deemed  
15 waived, and an extension of the reinstatement period will be imposed, if a  
16 written request for a hearing is not received at the Department of Motor  
17 Vehicles within 15 days after the date of the notice.

18           (B) When a holder receives a notice under subdivision (2)(A) of this  
19 subsection (f), the holder shall be deemed to have waived the right to a  
20 hearing, unless a written request for a hearing is received at the Department of  
21 Motor Vehicles within 15 days after the date of the notice. If a hearing is not

1 timely requested, the reinstatement period shall be extended in accordance with  
2 law.

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

5 (3)(A) A holder of an ignition interlock RDL or certificate who, prior to  
6 eligibility for reinstatement under section 1209a or 1216 of this title, is  
7 prevented from starting a motor vehicle because the ignition interlock device  
8 records a blood alcohol concentration of 0.04 or above, shall be subject to a  
9 three-month extension of the applicable reinstatement period in the event of  
10 three such recorded events, and to consecutive three-month extensions for  
11 every additional three recorded events thereafter. The Commissioner shall  
12 disregard a recording of 0.04 or above for the purposes of this subdivision if  
13 the Commissioner in his or her discretion finds, based on a pattern of tests or  
14 other reliable information, that the recording does not indicate the consumption  
15 of alcohol by the holder. The Commissioner shall notify the holder in writing  
16 after every recording of 0.04 or above that indicates the consumption of  
17 alcohol by the holder and, prior to any extension under this subdivision, the  
18 holder shall have the opportunity to be heard pursuant to subdivision (2) of this  
19 subsection (f).

20 (B) A holder of an ignition interlock RDL or certificate who, prior to  
21 eligibility for reinstatement under section 1209a or 1216 of this title, fails a

1 random retest because the ignition interlock device records a blood alcohol  
2 concentration of 0.04 or above and below ~~0.08~~ 0.05, shall be subject to  
3 consecutive three-month extensions of the applicable reinstatement period for  
4 every such recorded event. A holder who fails a random retest because of a  
5 recording of ~~0.08~~ 0.05 or above shall be subject to consecutive six-month  
6 extensions of the applicable reinstatement period for every such recorded  
7 event. The Commissioner shall disregard a recording of 0.04 or above for the  
8 purposes of this subdivision if the Commissioner in his or her discretion finds,  
9 based on a pattern of tests or other reliable information, that the recording does  
10 not indicate the consumption of alcohol by the holder. The Commissioner  
11 shall notify the holder in writing after every recording of 0.04 or above that is  
12 indicative of the consumption of alcohol by the holder and, prior to any  
13 extension under this subdivision, the holder shall have the opportunity to be  
14 heard pursuant to subdivision (2) of this subsection (f).

15 \* \* \*

16 Sec. 5. 23 V.S.A. § 4116 is amended to read:

17 § 4116. DISQUALIFICATION

18 (a) A person shall be disqualified from driving a commercial motor vehicle  
19 for a period of one year if convicted of a first violation of:



1 (1) operating, attempting to operate, or being in actual physical control  
2 of a commercial motor vehicle on a highway with an alcohol concentration of  
3 0.04 or more or under the influence, as defined in section 1218 of this title;

4 (2) failure to stop, as defined in section 1128 of this title;

5 (3) using a motor vehicle in the commission of any offense under State  
6 or federal law that is punishable by imprisonment for a term exceeding one  
7 year;

8 (4) refusal to submit to a test to determine the operator's alcohol  
9 concentration, as provided in section 1205, 1218, or 1219 of this title;

10 (5) operating, attempting to operate, or being in actual physical control  
11 of a motor vehicle on a highway with an alcohol concentration of ~~0.08~~ 0.05 or  
12 more or under the influence of alcohol or other substance, as defined in  
13 section 1201 of this title;

14 \* \* \*

15 Sec. 6. OPERATING A VEHICLE UNDER THE INFLUENCE OF

16 ALCOHOL; PUBLIC EDUCATION CAMPAIGN

17 (a) To inform highway users of the requirements of sections 1–5 of this act  
18 (lowering the legal blood alcohol content limit from 0.08 to 0.05) and the  
19 effective date of those sections, the Secretary of Transportation shall conduct a  
20 public education campaign to commence six months prior to the effective date  
21 of those sections.

1        (b) At a minimum, the Secretary shall:

2            (1) notify media outlets throughout the State of the change in the law to  
3        lower the threshold for driving under the influence from 0.08 percent blood  
4        alcohol content to 0.05 percent and the effective date of the change in the law;

5            (2) update the website of the Agency of Transportation and the website  
6        of the Department of Motor Vehicles to provide notice of the change in the law  
7        and its effective date; and

8            (3) consistent with the Manual on Uniform Traffic Control Devices and  
9        any other applicable federal law, post messages on changeable message signs  
10       of the Agency that inform highway users of the change in the law and its  
11       effective date.

12        Sec. 7. EFFECTIVE DATES

13        (a) Sec. 6 shall take effect when, by rule, legislation, or other agreement,  
14        two states that share a border with Vermont have enacted a 0.05 percent or  
15        lower blood alcohol content limit for operating a motor vehicle.

16        (b) Secs. 1–5 shall take effect six months after the date on which Sec. 6  
17        takes effect.

18        (c) This section shall take effect on passage.