

1 H.123

2 Introduced by Representative Arsenault of Williston

3 Referred to Committee on

4 Date:

5 Subject: Motor vehicles; operation of vehicles; drunken driving; driving while
6 ability impaired

7 Statement of purpose of bill as introduced: This bill proposes to create a new
8 civil violation for driving while ability impaired. Under this new violation, a
9 person will commit such an offense when the person's blood alcohol content is
10 not less than 0.06 but not exceeding 0.079. In the proposed bill, a person
11 adjudicated of the civil violation would be subject to a civil penalty of not
12 more than \$500.00 and the same suspension of driving privileges as someone
13 convicted of driving under the influence, but the person would not have an
14 entry on the person's criminal record.

15 An act relating to driving while ability impaired

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

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

18 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF

19 ALCOHOL OR OTHER SUBSTANCE; CRIMINAL REFUSAL;

20 ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

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

3 (1) when the person's alcohol concentration is:

4 (A) 0.08 or more; ~~or~~

5 (B) 0.02 or more if the person is operating a school bus as defined in
6 subdivision 4(34) of this title; or

7 (C) 0.04 or more if the person is operating a commercial vehicle as
8 defined in subdivision 4103(4) of this title; ~~or~~

9 (2) when the person is under the influence of alcohol; ~~or~~

10 (3) when the person is under the influence of any other drug or under the
11 combined influence of alcohol and any other drug; or

12 (4) when the person's ability to operate a motor vehicle is impaired by
13 the consumption of alcohol.

14 (b) Previous conviction; criminal refusal. A person who has previously
15 been convicted of a violation of this section shall not operate, attempt to
16 operate, or be in actual physical control of any vehicle on a highway and refuse
17 a law enforcement officer's reasonable request under the circumstances for an
18 evidentiary test where the officer had reasonable grounds to believe the person
19 was in violation of subsection (a) of this section.

20 (c) Serious bodily injury or death; criminal refusal. A person shall not
21 operate, attempt to operate, or be in actual physical control of any vehicle on a

1 highway and be involved in a crash or collision resulting in serious bodily
2 injury or death to another and refuse a law enforcement officer's reasonable
3 request under the circumstances for an evidentiary test where the officer has
4 reasonable grounds to believe the person has any amount of alcohol or drugs in
5 ~~his or her~~ the person's system.

6 (d) Enhanced penalty for BAC of 0.16 or more.

7 (1) A person who is convicted of a second or subsequent violation of
8 subsection (a), (b), or (c) of this section when the person's alcohol
9 concentration is proven to be 0.16 or more shall not, for three years from the
10 date of the conviction for which the person's alcohol concentration is 0.16 or
11 more, operate, attempt to operate, or be in actual physical control of any
12 vehicle on a highway when the person's alcohol concentration is 0.02 or more.
13 The prohibition imposed by this subsection shall be in addition to any other
14 penalties imposed by law.

15 (2) A person shall not operate, attempt to operate, or be in actual
16 physical control of any vehicle on a highway when the person's alcohol
17 concentration is 0.02 or more if the person has previously been convicted of a
18 second or subsequent violation of subsection (a), (b), or (c) of this section
19 within the preceding three years and the person's alcohol concentration for the
20 second or subsequent violation was proven to be 0.16 or greater. A violation

1 of this subsection shall be considered a third or subsequent violation of this
2 section and shall be subject to the penalties of subsection 1210(d) of this title.

3 (e) Limitation on defense. The fact that a person charged with a violation
4 of this section is or has been entitled to use a drug under the laws of this State
5 shall not constitute a defense against any charge of violating this section.

6 (f) Limitation on prosecution. A person may not be convicted of more than
7 one violation of subsection (a) of this section arising out of the same incident.

8 (g) Affirmative defense. For purposes of this section and section 1205 of
9 this title, the defendant may assert as an affirmative defense that the person
10 was not operating, attempting to operate, or in actual physical control of the
11 vehicle because the person:

12 (1) had no intention of placing the vehicle in motion; and

13 (2) had not placed the vehicle in motion while under the influence or
14 while ability impaired.

15 (h) Definitions.

16 (1) As used in subdivision (a)(3) of this section, “under the influence of
17 a drug” means that a person’s ability to operate a motor vehicle safely is
18 diminished or impaired in the slightest degree. This subsection shall not be
19 construed to affect the meaning of the term “under the influence of alcohol.”

20 (2) As used in subdivision (a)(4) of this section, “impaired by the
21 consumption of alcohol” means that a person’s blood alcohol concentration is

1 not less than 0.06 and not more than 0.079. This subsection shall not be
2 construed to affect the meaning of the term “under the influence of alcohol.”

3 (i) Evidence; presumptive admissibility. Evidence of the results of a
4 standardized field sobriety test conducted by a law enforcement officer trained
5 in Advanced Roadside Impaired Driving Enforcement or a certified Drug
6 Recognition Expert’s systematic evaluation of observable signs and symptoms
7 of a person charged with a violation of this section shall be presumptively
8 admissible at trial to demonstrate whether or not the person was operating
9 under the influence in violation of this section.

10 Sec. 2. 23 V.S.A. § 1210 is amended to read:

11 § 1210. PENALTIES

12 (a) Screening. Before sentencing a defendant under this section, the court
13 may order that the defendant submit to an alcohol assessment screening. Such
14 a screening report may be considered at sentencing in the same manner as a
15 presentence report. At sentencing, the defendant may present relevant
16 evidence, including the results of any independent alcohol assessment that was
17 conducted at the person’s own expense. Evidence regarding any such
18 screening or an alcohol assessment performed at the expense of the defendant
19 shall not be admissible for any other purpose without the defendant’s consent.

20 (b) First offense.

1 (1) A person who violates section 1201 of this title may be fined not
2 more than \$750.00 or imprisoned for not more than two years, or both.

3 (2) Notwithstanding subdivision (1) of this subsection, a person who
4 violates subdivision 1201(a)(4) of this title shall be subject to a civil violation
5 and fined not more than \$500.00.

6 (c) Second offense. A person convicted of violating section 1201 of this
7 title who has been convicted or adjudicated of another violation of that section
8 within the last 20 years shall be fined not more than \$1,500.00 or imprisoned
9 not more than two years, or both. At least 200 hours of community service
10 shall be performed, or 60 consecutive hours of the sentence of imprisonment
11 shall be served and may not be suspended or deferred or served as a supervised
12 sentence, except that credit for a sentence of imprisonment may be received for
13 time served in a residential alcohol facility pursuant to sentence if the program
14 is successfully completed.

15 (d) Third offense. A person convicted of violating section 1201 of this title
16 who has previously been convicted or adjudicated two times of a violation of
17 that section, including at least one violation within the last 20 years, shall be
18 fined not more than \$2,500.00 or imprisoned not more than five years, or both.
19 At least 96 consecutive hours of the sentence of imprisonment shall be served
20 and may not be suspended or deferred or served as a supervised sentence,
21 except that credit for a sentence of imprisonment may be received for time

1 served in a residential alcohol facility pursuant to sentence if the program is
2 successfully completed. The court may impose a sentence that does not
3 include a term of imprisonment or that does not require that the 96 hours of
4 imprisonment be served consecutively only if the court makes written findings
5 on the record that such a sentence will serve the interests of justice and public
6 safety.

7 (e) Fourth or subsequent offense.

8 (1) A person convicted of violating section 1201 of this title who has
9 previously been convicted or adjudicated three or more times of a violation of
10 that section, including at least one violation within the last 20 years, shall be
11 fined not more than \$5,000.00 or imprisoned not more than 10 years, or both.
12 At least 192 consecutive hours of the sentence of imprisonment shall be served
13 and may not be suspended or deferred or served as a supervised sentence,
14 except that credit for a sentence of imprisonment may be received for time
15 served in a residential alcohol treatment facility pursuant to sentence if the
16 program is successfully completed. The court shall not impose a sentence that
17 does not include a term of imprisonment unless the court makes written
18 findings on the record that there are compelling reasons why such a sentence
19 will serve the interests of justice and public safety.

1 (2) The Department of Corrections shall provide alcohol and substance
2 abuse treatment, when appropriate, to any person convicted of a violation of
3 this subsection.

4 (f) Death resulting.

5 (1) If the death of any person results from a violation of section 1201 of
6 this title, the person convicted of the violation shall be fined not more than
7 \$10,000.00 or imprisoned not less than one year nor more than 15 years, or
8 both. The provisions of this subsection do not limit or restrict prosecutions for
9 manslaughter.

10 (2) If the death of more than one person results from a violation of
11 section 1201 of this title, the operator may be convicted of a separate violation
12 of this subdivision for each decedent.

13 (3)(A) If the death of any person results from a violation of section 1201
14 of this title and the person convicted of the violation previously has been
15 convicted two or more times of a violation of that section, a sentence ordered
16 pursuant to this subsection shall, except as provided in subdivision (B) of this
17 subdivision (3), include at least a five-year term of imprisonment. The five-
18 year minimum term of imprisonment required by this subdivision (3)(A) shall
19 be served and may not be suspended, deferred, or served as a supervised
20 sentence. The defendant shall not be eligible for probation, parole, furlough, or

1 any other type of early release until the expiration of the five-year term of
2 imprisonment.

3 (B) Notwithstanding subdivision (A) of this subdivision (3), if the
4 death of any person results from a violation of section 1201 of this title and the
5 person convicted of the violation previously has been convicted two or more
6 times of a violation of that section, the court may impose a sentence that does
7 not include a term of imprisonment or that includes a term of imprisonment of
8 less than five years if the court makes written findings on the record that such a
9 sentence will serve the interests of justice and public safety.

10 (g) Injury resulting.

11 (1) If serious bodily injury, as defined in 13 V.S.A. § 1021(2), results to
12 any person other than the operator from a violation of section 1201 of this title,
13 the person convicted of the violation shall be fined not more than \$5,000.00 or
14 imprisoned not more than 15 years, or both.

15 (2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to
16 more than one person other than the operator from a violation of section 1201
17 of this title, the operator may be convicted of a separate violation of this
18 subdivision for each person injured.

19 (3)(A) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results
20 to any person other than the operator from a violation of section 1201 of this
21 title and the person convicted of the violation previously has been convicted

1 two or more times of a violation of section 1201, a sentence ordered pursuant
2 to this subsection shall, except as provided in subdivision (B) of this
3 subdivision (3), include at least a five-year term of imprisonment. The five-
4 year minimum term of imprisonment required by this subdivision (3)(A) shall
5 be served and may not be suspended, deferred, or served as a supervised
6 sentence. The defendant shall not be eligible for probation, parole, furlough,
7 or any other type of early release until the expiration of the five-year term of
8 imprisonment.

9 (B) Notwithstanding subdivision (A) of this subdivision (3), if
10 serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person
11 other than the operator from a violation of section 1201 of this title and the
12 person convicted of the violation previously has been convicted two or more
13 times of a violation of section 1201, the court may impose a sentence that does
14 not include a term of imprisonment or that includes a term of imprisonment of
15 less than five years if the court makes written findings on the record that such a
16 sentence will serve the interests of justice and public safety.

17 (h) Determination of fines. In determining appropriate fines under this
18 section, the court may take into account the total cost to a defendant of alcohol
19 screening, participation in the Alcohol and Driving Education Program and
20 therapy, and the income of the defendant.

1 (i) Surcharge; Blood and Breath Alcohol Testing Special Fund. A person
2 convicted of violating section 1201 of this title shall be assessed a surcharge of
3 \$60.00, which shall be added to any fine imposed by the court. The court shall
4 collect and transfer such surcharge to the Department of Public Safety for
5 deposit in the Blood and Breath Alcohol Testing Special Fund established by
6 section 1220b of this title.

7 (j) Surcharge; Public Defender Special Fund. A person convicted of
8 violating section 1201 of this title shall be assessed a surcharge of \$50.00,
9 which shall be added to any fine or surcharge imposed by the court. The court
10 shall collect and transfer the surcharge assessed under this subsection to the
11 Office of Defender General for deposit in the Public Defender Special Fund,
12 specifying the source of the monies being deposited. The collection
13 procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of
14 this surcharge.

15 (k) Surcharge; DUI Enforcement Special Fund. A person convicted of
16 violating section 1201 of this title shall be assessed a surcharge of \$50.00,
17 which shall be added to any fine or surcharge imposed by the court. The court
18 shall collect and transfer the surcharge assessed under this subsection to be
19 credited to the DUI Enforcement Special Fund. The collection procedures
20 described in 13 V.S.A. § 5240 shall be utilized in the collection of this
21 surcharge.

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2025.