

1 H.511

2 Introduced by Committee on Transportation

3 Date:

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

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

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

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

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

17 (4) allow additional professionals to conduct an evidentiary blood draw,  
18 and allow a medical facility or business to charge an agency not more than  
19 \$75.00 for an evidentiary blood draw;

20 (5) prohibit operation of a motor vehicle while possessing or operating  
21 under the influence of drugs for individuals under 21 years of age and

1 imposing civil penalties for such a violation;

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

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

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

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

12 An act relating to highway safety

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

14 \* \* \* Driving Under the Influence \* \* \*

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

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

18 (1) when the person's alcohol concentration is 0.08 or more, or 0.02 or  
19 more if the person is operating a school bus as defined in subdivision 4(34) of

1 ~~this title~~ vehicle when the operation requires an operator's license with a  
2 school bus endorsement; or

3 \* \* \*

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

5 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD  
6 ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

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

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



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

7 \* \* \*

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

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

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

14 (2) fined not more than \$5,000.00 or imprisoned for not more than  
15 10 years, or both, if the violation results in the death of or serious bodily injury  
16 to the minor.

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

18 § 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND  
19 VIDEOTAPE

20 (a) A breath test shall be administered only by a person who has been  
21 certified by the Vermont Criminal Justice Training Council to operate the

1 breath testing equipment being employed. In any proceeding under this  
2 subchapter, a person's testimony that he or she is certified to operate the breath  
3 testing equipment employed shall be prima facie evidence of that fact.

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

13 \* \* \*

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

15 § 1217. PERSONS UNDER 21 YEARS OF AGE; OPERATING A

16 VEHICLE WHILE IN POSSESSION OR UNDER THE

17 INFLUENCE OF A DRUG; CIVIL PENALTIES

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

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

21 (2) in possession of a regulated drug as defined in 18 V.S.A. § 4201,

1 unless the person obtained possession with a valid prescription or registration  
2 card, or the person is lawfully transporting or delivering the drug.

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

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

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

11 (3) Any suspension imposed pursuant to this section shall run  
12 concurrently with any suspension imposed pursuant to section 1205, 1206,  
13 1208, or 1216 of this title, any suspension imposed by another jurisdiction  
14 under comparable statutes, or a suspension resulting from a conviction for a  
15 violation of section 1091 of this title if it arose from the same incident. A  
16 person shall receive credit for any elapsed period of a suspension served in  
17 Vermont against a later suspension imposed in Vermont.

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

20 (d) Any civil penalty imposed by this section shall not bar prosecution for  
21 any crime arising out of the same violation, including a prosecution under

1 section 1201 of this title.

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

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

5 § 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR  
6 POSSESSION OF ALCOHOL OR MARIJUANA

(a) A person shall not consume alcoholic beverages or marijuana while operating a motor vehicle on a public highway. *As used in this subsection, the prohibition on consumption of marijuana by the operator shall extend to the operator’s consumption of second-hand marijuana smoke in the vehicle as a result of another person’s consumption of marijuana.* As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

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

10 (c) As used in this section, “passenger area” shall mean the area designed  
11 to seat the operator and passengers while the motor vehicle is in operation and  
12 any area that is readily accessible to the operator or passengers while in their  
13 seating positions, including the glove compartment, unless the glove  
14 compartment is locked. In a motor vehicle that is not equipped with a trunk,



1 the term shall exclude the area behind the last upright seat or any area not  
2 normally occupied by the operator or passengers.

3 (d) A person who violates subsection (a) of this section shall be assessed a  
4 civil penalty of not more than \$500.00. A person who violates subsection (b)  
5 of this section shall be assessed a civil penalty of not more than ~~\$25.00~~ \$50.00.

6 A person adjudicated and assessed a civil penalty for an offense under  
7 subsection (a) of this section shall not be subject to a civil violation for the  
8 same actions under subsection (b) of this section.

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

10 § 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR  
11 POSSESSION OF ALCOHOL OR MARIJUANA

12 (a) Except as provided in subsection (c) of this section, a passenger in a  
13 motor vehicle shall not consume alcoholic beverages or marijuana or possess  
14 any open container which contains alcoholic beverages or marijuana in the  
15 passenger area of any motor vehicle on a public highway. As used in this  
16 section, “alcoholic beverages” shall have the same meaning as “intoxicating  
17 liquor” as defined in section 1200 of this title.

18 (b) As used in this section, “passenger area” shall mean the area designed  
19 to seat the operator and passengers while the motor vehicle is in operation and  
20 any area that is readily accessible to the operator or passengers while in their  
21 seating positions, including the glove compartment, unless the glove

1 compartment is locked. In a motor vehicle that is not equipped with a trunk,  
2 the term shall exclude the area behind the last upright seat or any area not  
3 normally occupied by the operator or passengers.

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

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

10 \* \* \* Learner's Permits; Supervision \* \* \*

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

12 (a)(1)(A) An unlicensed person 15 years of age or older may operate a  
13 motor vehicle if he or she possesses a valid learner's permit issued to him or  
14 her by the Commissioner, or by another jurisdiction in accordance with section  
15 208 of this title, and if one of the following persons who is not under the  
16 influence of alcohol or drugs rides beside him or her:

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

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

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

20 (iv) a licensed person at least 25 years of age ~~rides beside him~~

21 ~~or her.~~

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

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

12   \* \* \* Seat Belts \* \* \*

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

14           § 1259. SAFETY BELTS; PERSONS 18 YEARS OF AGE ~~18 OR OVER~~  
15   OLDER

16   \* \* \*

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

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

22                 (1) \$25.00 for a first violation;

1 (2) \$50.00 for a second violation;

2 (3) \$100.00 for third and subsequent violations.

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

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

5 § 1102. REMOVAL OF STOPPED VEHICLES

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

8 (1) ~~move~~ cause the removal of a vehicle stopped, parked, or standing  
9 contrary to section 1101 of this title, or ~~to~~ require the driver or other person in  
10 charge to move the vehicle to a safe position off the ~~paved or~~ main-traveled  
11 part of the highway;

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

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

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

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

21 (C) the person in charge of the vehicle has been arrested under

1 circumstances ~~which~~ that require his or her immediate removal from control of  
2 the vehicle.

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

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

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

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

18 (3) The authority provided to the owner or operator under subdivision  
19 (1) of this subsection may be superseded by the enforcement officer if the  
20 towing operator of choice cannot respond to the scene in a timely fashion and  
21 the vehicle or cargo is a hazard, impedes the flow of traffic, or may not legally

1 remain in its location in the opinion of the enforcement officer.

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

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

9 ~~(e) Except for intentionally inflicted damage or gross negligence, a person~~  
10 ~~who moves a vehicle or cargo or causes a vehicle or cargo to be moved in~~  
11 ~~accordance with this section shall not be liable for damage incurred during the~~  
12 ~~move.~~

*(e) Except for intentionally inflicted damage or gross negligence, an*  
*enforcement officer or a person acting at the direction of an enforcement*  
*officer who removes from a highway a motor vehicle or cargo that is*  
*obstructing traffic or maintenance activities or creating a hazard to traffic*  
*shall not be liable for damage to the vehicle or cargo incurred during the*  
*removal.*

13 (f) Any enforcement officer causing the removal of a motor vehicle under  
14 this section shall notify the Department as to the location and date of discovery  
15 of the vehicle, date of removal of the vehicle, name of the towing service

1 removing the vehicle, and place of storage. The officer shall record and  
2 remove from the vehicle, if possible, any information ~~which~~ that might aid the  
3 Department in ascertaining the ownership of the vehicle and forward it the  
4 information to the Department. A motor vehicle towed under authority of this  
5 section may qualify as an abandoned motor vehicle under subchapter 7 of  
6 chapter 21 of this title.

7 \* \* \* Effective Dates \* \* \*

8 Sec. 11. EFFECTIVE DATES

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

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