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H.761

Introduced by Representatives Smith of Derby, Andrews of Westford,
Anthony of Barre City, Arrison of Weathersfield, Bartley of
Fairfax, Beck of St. Johnsbury, Berbeco of Winooski, Bongartz
of Manchester, Boyden of Cambridge, Branagan of Georgia,
Brennan of Colchester, Canfield of Fair Haven, Carroll of
Bennington, Chesnut-Tangerman of Middletown Springs,
Christie of Hartford, Clifford of Rutland City, Cole of Hartford,
Corcoran of Bennington, Cordes of Lincoln, Demar of
Enosburgh, Dickinson of St. Albans Town, Elder of Starksboro,
Farlice-Rubio of Barnet, Galfetti of Barre Town, Goslant of
Northfield, Graham of Williamstown, Gregoire of Fairfield,
Hango of Berkshire, Harrison of Chittenden, Higley of Lowell,
Hooper of Randolph, Hooper of Burlington, Howard of Rutland
City, Labor of Morgan, Laroche of Franklin, Lipsky of Stowe,
Logan of Burlington, Masland of Thetford, Mattos of Milton,
McFaun of Barre Town, McGill of Bridport, Morgan of Milton,
Morris of Springfield, Morrissey of Bennington, Oliver of
Sheldon, Page of Newport City, Parsons of Newbury, Patt of
Worcester, Peterson of Clarendon, Satcowitz of Randolph, Sims
of Craftsbury, Small of Winooski, Taylor of Milton,

1 Templeman of Brownington, Toof of St. Albans Town, Torre of
2 Moretown, Troiano of Stannard, Walker of Swanton, Williams
3 of Granby, and Wilson of Lyndon

4 Referred to Committee on

5 Date:

6 Subject: Motor vehicles; distracted driving; portable electronic devices; work
7 zones; school zones; texting; civil penalties; point assessments;
8 diversion program

9 Statement of purpose of bill as introduced: This bill proposes to change the
10 penalties and point assessments for violating laws governing the use of a
11 portable electronic device, including for texting, while operating a moving
12 motor vehicle on a highway and to establish the Distracted Driving Diversion
13 Program.

14 An act relating to penalties and point assessments for using a portable
15 electronic device while operating a moving motor vehicle and the Distracted
16 Driving Diversion Program

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

18 * * * Use of Portable Electronic Devices * * *

19 Sec. 1. 23 V.S.A. § 1095a is amended to read:

20 § 1095a. JUNIOR OPERATOR USE OF PORTABLE ELECTRONIC
21 DEVICES

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* * *

(d)(1) An individual who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a civil penalty of not less than ~~\$100.00~~ \$25.00 and not more than ~~\$200.00~~ \$50.00 for a first violation, and of not less than ~~\$250.00~~ \$50.00 and not more than ~~\$500.00~~ \$75.00 for a second or subsequent violation within any two-year period.

(2) An individual convicted of violating this section ~~while operating within the following areas shall be subject to a civil penalty of not less than \$200.00 and not more than \$400.00 for a first violation, and of not less than \$500.00 and not more than \$1,000.00 for a second or subsequent violation within any two-year period and shall have four~~ five points assessed against his or her the individual's driving record ~~for a first violation and five points assessed for a second or subsequent violation:~~

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

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

(3) ~~An individual convicted of violating this section outside the areas designated in subdivision (2) of this subsection shall have two points assessed against his or her driving record. [Repealed.]~~

1 Sec. 2. 23 V.S.A. § 1095b is amended to read:

2 § 1095b. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE

3 PROHIBITED

4 * * *

5 (c) Penalties.

6 (1) An individual who violates this section commits a traffic violation as
7 defined in section 2302 of this title and shall be subject to a civil penalty of not
8 less than ~~\$100.00 and not more than \$200.00~~ \$250.00 and shall have four
9 points assessed against the individual's driving record for a first violation, and
10 shall be subject to a civil penalty of not less than ~~\$250.00 and not more than~~
11 \$500.00 and shall have five points assessed against the individual's driving
12 record for a second or subsequent violation within any two-year period.

13 (2) An individual convicted of violating this section while operating
14 within the following areas shall be subject to ~~a~~ an additional civil penalty of
15 ~~not less than \$200.00 and not more than \$400.00 for a first violation, and of~~
16 ~~not less than \$500.00 and not more than \$1,000.00 for a second or subsequent~~
17 ~~violation within any two-year period~~ \$250.00 and shall have ~~four~~ an additional
18 five points assessed against his or her the individual's driving record for a first
19 ~~conviction and five points assessed for a second or subsequent conviction:~~

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

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

3 (3) ~~An individual convicted of violating this section outside the areas~~
4 ~~designated in subdivision (2) of this subsection shall have two points assessed~~
5 ~~against his or her driving record. [Repealed.]~~

6 * * *

7 Sec. 3. 23 V.S.A. § 1099 is amended to read:

8 § 1099. TEXTING PROHIBITED

9 * * *

10 (c)(1) An individual who violates this section commits a traffic violation as
11 defined in section 2302 of this title and shall be subject to a civil penalty of not
12 less than ~~\$100.00 and not more than \$200.00~~ \$250.00 and shall have four
13 points assessed against the individual's driving record for a first violation, and
14 shall be subject to a civil penalty of not less than ~~\$250.00 and not more than~~
15 ~~\$500.00~~ \$500.00 and shall have five points assessed against the individual's driving
16 record for a second or subsequent violation within any two-year period.

17 (2) An individual convicted of violating this section while operating
18 within the following areas shall be subject to a an additional civil penalty of
19 ~~not less than \$200.00 and not more than \$400.00 for a first violation, and of~~
20 ~~not less than \$500.00 and not more than \$1,000.00 for a second or subsequent~~
21 ~~violation within any two-year period~~ \$250.00 and shall have ~~four~~ an additional

1 ~~five points assessed against his or her the individual's driving record for a first~~
2 ~~conviction and five points assessed for a second or subsequent conviction:~~

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

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

7 (3) ~~An individual convicted of violating this section outside the areas~~
8 ~~designated in subdivision (2) of this subsection shall have two points assessed~~
9 ~~against his or her driving record~~ Notwithstanding subsection 2502(b) of this
10 title, an individual who causes a crash resulting in property damage, injury, or
11 death because the individual violated this section shall be subject to a civil
12 penalty of not less than \$500.00 and shall have 10 points assessed against the
13 individual's driving record.

14 Sec. 4. 23 V.S.A. § 4125 is amended to read:

15 § 4125. TEXTING VIOLATIONS; HANDHELD MOBILE TELEPHONE

16 VIOLATIONS

17 * * *

18 (b) General prohibition on texting.

19 * * *

1 (3) No ~~person~~ operator may be issued traffic complaints alleging a
2 violation of this section and a violation of section 1099 of this title from the
3 same incident.

4 * * *

5 (e) Penalties.

6 (1) An operator who violates this section commits a traffic violation as
7 defined in section 2302 of this title and shall be subject to a civil penalty of not
8 less than \$500.00 and shall have five points assessed against the individual's
9 driving record.

10 (2) An operator convicted of violating this section while operating
11 within the following areas shall have an additional five points assessed against
12 the individual's driving record:

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

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

17 * * * Point Assessments * * *

18 Sec. 5. 23 V.S.A. § 2502(a) is amended to read:

19 (a) Unless the assessment of points is waived by a Superior judge or a
20 Judicial Bureau hearing officer in the interests of justice and in accordance
21 with subsection 2501(b) of this title, ~~a person~~ an individual operating a motor

1 vehicle shall have points assessed against ~~his or her~~ the individual's driving
2 record for convictions for moving violations of the indicated motor vehicle
3 statutes in accord with the following schedule: (All references are to this title
4 of the Vermont Statutes Annotated.)

5 (1) Two points assessed for:

6 * * *

7 (LL)(+) § 1095. Entertainment picture visible
8 to operator;

9 (ii) — § 1095a(d)(3). ~~Junior operator use of~~
10 ~~portable electronic device~~
11 ~~outside work or school zone;~~

12 (iii) — § 1095b(e)(3). ~~Use of portable electronic~~
13 ~~device outside work or school~~
14 ~~zone;~~

15 (MM) § 1099(e)(3). ~~Texting outside work or~~
16 ~~school zone; [Repealed.]~~

17 * * *

18 (3) Four points assessed for:

19 * * *

20 (E) § 1095a(d)(2). ~~Junior operator use of~~
21 ~~portable electronic device in~~

1 ~~work or school zone—first~~
2 ~~offense;~~
3 (F) § 1095b(c)(2)(1). Use Handheld use of portable
4 electronic device ~~in~~ outside work or
5 school zone—first ~~offense~~ violation;
6 (G)(F) § 1099(c)(2)(1). Texting ~~in~~ outside work or school
7 zone—first ~~offense~~ violation;
8 (G) [Repealed.]
9 (4) Five points assessed for:
10 * * *
11 (C) § 1099(c)(2)(1). Texting ~~in~~ outside work or school
12 zone—second and subsequent ~~offense~~
13 violations;
14 (D) § 1095a(d)(2). Junior operator use of portable
15 electronic device ~~in work or school~~
16 ~~zone—second and subsequent offenses;~~
17 (E) § 1095b(c)(2)(1). Use Handheld use of portable
18 electronic device ~~in~~ outside work or
19 school zone—second and subsequent
20 ~~offenses~~ violations;
21 (F) § 4125(e)(1). Texting violations; handheld mobile

1 telephone violations outside work or
2 school zone;

3 (5) Nine points assessed for:

4 (A) § 1095b(c)(2). Handheld use of portable electronic
5 device in work or school zone—
6 first violation;

7 (B) § 1099(c)(2). Texting in work or school zone—
8 first violation;

9 (6) Ten points assessed for:

10 * * *

11 (F) § 1095b(c)(2). Handheld use of portable electronic
12 device in work or school zone—
13 second and subsequent violations;

14 (G) § 1099(c)(2). Texting in work or school zone—
15 second and subsequent violations;

16 (H) § 1099(c)(3). Texting—crash resulting;

17 (I) § 4125(e)(2). Texting violations; handheld mobile
18 telephone violations in work or
19 school zone;

1 ~~(6)~~(7) Two points assessed for sections 1003 and 1007. State speed
2 zones and local speed limits, less than 10 miles per hour over and in excess of
3 speed limit.

4 ~~(7)~~(8) Three points assessed for sections 1003 and 1007. State speed
5 zones and local speed limits, more than 10 miles per hour over and in excess of
6 speed limit.

7 ~~(8)~~(9) Five points assessed for sections 1003 and 1007. State speed
8 zones and local speed limits, more than 20 miles per hour over and in excess of
9 speed limit.

10 ~~(9)~~(10) Eight points assessed for sections 1003 and 1007. State speed
11 zones and local speed limits, more than 30 miles per hour over and in excess of
12 the speed limit.

13 * * * Recall of Learner's Permit or Junior Operator's License * * *

14 Sec. 6. 23 V.S.A. § 607a(a) is amended to read:

15 (a) A learner's permit or junior operator's license shall contain an
16 admonition that it is recallable and that the later procurement of an operator's
17 license is conditional on the establishment of a record that is satisfactory to the
18 Commissioner and showing compliance with the motor vehicle laws of this
19 and other states. The Commissioner may recall any permit or license issued to
20 a minor whenever ~~he or she~~ the Commissioner is satisfied, from information
21 provided by a credible ~~person~~ individual and upon investigation, that the

1 operator is mentally or physically unfit or, because of ~~his or her~~ the operator's
2 habits or record as to crashes or convictions, is unsafe to be trusted with the
3 operation of motor vehicles. On recommendation of a diversion or reparative
4 board, the Commissioner may recall the learner's permit or junior operator's
5 license of ~~a person~~ an individual in a diversion or reparative program for up to
6 30 days. The Commissioner shall also recall any learner's permit or junior
7 operator's license for 30 days when ~~an operator is adjudicated of a single~~
8 ~~texting violation under section 1099 of this title, 90 days following~~
9 ~~adjudication of a single speeding violation resulting in a three-point assessment~~
10 a total of at least three points has been accumulated, 90 days when a total of at
11 least six points has been accumulated, or 90 days when an operator is
12 adjudicated of a violation of subsection 614(c) or 615(a) of this title. When a
13 learner's permit or junior operator's license is so recalled, it shall be reinstated
14 upon expiration of a specific term and, if required by the Commissioner, when
15 the ~~person~~ individual has passed a reexamination approved by the
16 Commissioner.

17 * * * Diversion Program * * *

18 Sec. 7. 23 V.S.A. § 2304 is added to read:

19 § 2304. DISTRACTED DRIVING DIVERSION PROGRAM

20 (a) Issuance of a notice of violation. A law enforcement officer shall issue
21 a notice of violation, in a form approved by the Court Administrator, to an

1 individual charged with a first violation of section 1095a, 1095b, or 1099 of
2 this title. The notice of violation shall require the individual to provide the
3 individual's name and address and shall explain procedures under this section,
4 including that:

5 (1) the individual shall contact the Diversion Program in the county
6 where the offense occurred within 15 days;

7 (2) failure to contact the Diversion Program within 15 days will result in
8 the case being referred to the Judicial Bureau, where the individual, if
9 convicted of the violation, may be subject to one or more of the following:

10 (A) a civil penalty;

11 (B) points imposition;

12 (C) the suspension of the individual's operator's license or privilege
13 to operate by the Commissioner; or

14 (D) substantially increased insurance rates;

15 (3) no money shall be submitted to pay any penalty until after
16 conviction; and

17 (4) the individual shall notify the Diversion Program if the individual's
18 address changes.

19 (b) Citation for violation. When an individual is issued a notice of
20 violation under subsection (a) of this section, the law enforcement officer shall
21 complete a citation for the violation and send it to the Diversion Program in the

1 county where the violation occurred. The citation shall not be filed with the
2 Judicial Bureau at that time.

3 (c) Registration in Distracted Driving Diversion Program. Within 15 days
4 after receiving a notice of violation, the individual shall contact the Diversion
5 Program in the county where the violation occurred and register for the
6 Distracted Driving Diversion Program. If the individual fails to do so, the
7 Diversion Program shall file the citation with the Judicial Bureau for
8 adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide
9 a copy of the citation to the law enforcement officer who issued the notice of
10 violation and shall provide two copies to the individual cited for the violation.

11 (d) Notice to report to Diversion Program. Upon receipt from a law
12 enforcement officer of a citation completed under subsection (b) of this
13 section, the Diversion Program shall send the individual a notice to report to
14 the Diversion Program and meet with Diversion Program staff to:

15 (1) assess the individual's risk for future traffic violations;

16 (2) identify factors that contributed to previous traffic violations; and

17 (3) develop a contract to be presented to the Judicial Bureau for review

18 that may include one or more of the following:

19 (A) completion of a driving education program approved by the
20 Vermont State Highway Safety Office;

1 (B) any other conditions related to the distracted driving traffic
2 violation; or

3 (C) a fee, not to exceed \$50.00 in the case of a violation of section
4 1095a of this title and not to exceed \$100.00 in the case of a violation of
5 section 1095b or 1099 of this title, determined using a sliding scale based on
6 the financial means of the individual, to be deposited in the Distracted Driving
7 Diversion Program Special Fund established pursuant to section 2306 of this
8 title.

9 (e) Referral to the Judicial Bureau. If an individual issued the notice of
10 violation under subsection (a) of this section does not satisfactorily comply
11 with the Diversion Program contract and other conditions related to the
12 violation imposed by the Diversion Program, the Diversion Program shall file
13 the citation completed pursuant to subsection (b) of this section with the
14 Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion
15 Program shall provide a copy of the citation to the law enforcement officer
16 who issued the notice of violation and shall provide two copies to the
17 individual charged with the violation.

18 (f) Satisfactory compliance with the Diversion Program. If the individual
19 satisfactorily complies with the Diversion Program contract and other
20 conditions related to the violation imposed by the Diversion Program, the
21 individual shall be convicted of the traffic violation but only subject to a civil

1 penalty of \$1.00, which shall be exempt from surcharges under 13 V.S.A.
2 § 7282(a), and no assessment of points.

3 (g) Appeals. An individual aggrieved by a decision of the Diversion
4 Program may seek review of that decision pursuant to Rule 75 of the Vermont
5 Rules of Civil Procedure.

6 Sec. 8. 23 V.S.A. § 2306 is added to read:

7 § 2306. DISTRACTED DRIVING DIVERSION PROGRAM SPECIAL
8 FUND

9 There is established the Distracted Driving Diversion Program Special
10 Fund, which shall be managed in accordance with 32 V.S.A. chapter 7,
11 subchapter 5. Fees collected pursuant to section 2304 of this title shall be
12 deposited and credited to this Fund. This Fund shall be available to the
13 Attorney General to enter into memorandums of understanding with diversion
14 programs to pay for contractual and operating expenses and project-related
15 staffing related to the Distracted Driving Diversion Program.

16 Sec. 9. APPROVAL OF DRIVING EDUCATION PROGRAMS

17 The Vermont State Highway Safety Office, in consultation with the
18 Department of Public Safety and the Vermont Sheriffs' Association, shall
19 approve at least one driving education program that shall be sufficient for
20 purposes of 23 V.S.A. § 2304(d)(3)(A), as added by Sec. 7 of this act, in each
21 county within the State on or before January 1, 2025.

1

* * * Effective Dates * * *

2

Sec. 10. EFFECTIVE DATES

3

(a) This section (effective dates) and Sec. 9 (approval of driving education programs) shall take effect on passage.

4

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(b) All other sections shall take effect on January 1, 2025.