

## **H. 571 HOUSE-AS-PASSED SUMMARY**

### **BACKGROUND**

- According to the Vermont Department of Motor Vehicles, as of January 2016, the licenses or privileges to operate<sup>1</sup> a motor vehicle of 56,459 Vermonters were suspended.
- A person's license may be suspended under Vermont law for numerous reasons. In recent years, approximately 2/3 of suspensions have been imposed for one reason: nonpayment of a traffic violation judgment.
- Traffic violations include many offenses relating to driving a motor vehicle, but also numerous other offenses that have nothing to do with driving a motor vehicle.<sup>2</sup>
- In addition, some license suspensions are imposed pursuant to other laws that are not traffic violations and are totally unrelated to operation of a motor vehicle.
- Under Vermont law, prior to termination of a license suspension, a person must apply to the Department of Motor Vehicles and pay a reinstatement fee that is currently \$71.

### **GENERAL TOPICS ADDRESSED IN THE BILL**

The Judiciary Committee's strike-all amendment addresses a number of topics:

- Sec. 1 addresses suspensions imposed for conduct that occurred before July 1, 1990.
- Sec. 2 creates a Statewide Driver Restoration Program (Program) for persons under suspension as of the effective date of the bill.
- Sec. 2a provides for the termination of suspensions pending on the effective date of the bill if the suspension was imposed under a statute or provision that is repealed in the bill.
- Secs. 3–15 repeal or amend laws that require license suspensions or refusal to renew motor vehicle registrations for various nondriving activities, and repeal or amend laws related to criminal penalties for third or subsequent underage alcohol and marijuana offenses.
- Sec. 16 amends the law that authorizes criminal penalties for driving with a suspended license.
- Secs. 17–22 amend various laws related to the assessment of points against a person's driving record for motor vehicle moving violations.
- Sec. 23 requires the Judicial Bureau to consider during a hearing a person's ability to pay a judgment if evidence of ability to pay is presented.
- Sec. 24 repeals the DLS Diversion Program on July 1, 2016.
- Sec. 25 consists of recommended measures to increase awareness of traffic violation judgment payment and hearing options.
- Secs. 26–28 require the reporting of statistics related to the bill.
- Sec. 29 amends the definition of "moving violation" in Title 23 to include the child restraint system law within its scope.
- Sec. 30 is the effective dates section.

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<sup>1</sup> If a person does not have a Vermont license to suspend, the Commissioner of DMV may suspend the person's "privilege to operate" in Vermont. For brevity, this summary will refer in most instances to "license" suspensions.

<sup>2</sup> Examples of nondriving offenses include failure to register a motor vehicle, failure to have a motor vehicle inspected, pedestrian violations, bicycle violations, and violations by operators of snowmobiles.

## **I. SUSPENSIONS AND JUDGMENTS PENDING ON THE BILL'S EFFECTIVE DATE**

### **Sec. 1**

- Directs the Commissioner of Motor Vehicles to terminate suspensions imposed because of a person's failure to appear on a criminal traffic offense charged before July 1, 1990, where the charge arose from conduct that is a civil traffic violation under current Vermont law.
- The Commissioner is directed to terminate these suspensions "as soon as possible" after the bill takes effect.

### **Sec. 2**

- Subsec. (a) creates a Statewide Driver Restoration Program (Program) to be carried out by the Department of Motor Vehicles and the Judicial Bureau from September 1, 2016–November 30, 2016.
- Subsec. (b) provides that under the Program, a person who has not paid in full the amount due on a traffic violation judgment entered prior to January 1, 2015 may apply to the Judicial Bureau to have the amount due reduced to \$30. (However, judgments for commercial motor vehicle violations are not eligible for reduction.)
- Subsec. (c) addresses options for people with judgments that are not eligible for reduction under subsec. (b).
  - Subdiv. (c)(1) allows a person with an outstanding traffic violation judgment entered on or after January 1, 2015 and before July 1, 2016 to file a postjudgment motion to amend the judgment based on the person's ability to pay.
  - Subdiv. (c)(2) allows a person with outstanding traffic violation judgments to pay off the judgments under a payment plan that requires payment of no more than \$100 per month, regardless of when the judgments were entered.
- Subsec. (d) addresses restoration of driving privileges.
  - Subdiv. (d)(1) directs the Judicial Bureau to notify DMV of compliance if a person has paid all traffic violation judgments reduced to \$30 under the Program and is on a payment plan for any other judgment.
  - Subdiv. (d)(2)(A) directs the Commissioner of DMV, upon receipt of this notification, to terminate the person's pending suspensions arising from nonpayment of traffic violation judgments, without requiring the person to apply or pay a reinstatement fee.
  - Subdiv. (d)(2)(B) also directs the Commissioner during the Program time period to terminate suspensions related to nonpayment of traffic violation judgments without requiring a reinstatement fee, in the case of individuals who have paid all outstanding traffic violation judgments in full or are in compliance with a payment plan prior to Dec. 1, 2016.
- Subsec. (e) directs the Agency of Transportation to conduct a public awareness campaign about the Program.
- Subsec. (f) provides for monies collected on traffic violation judgments reduced to \$30 or on judgments reduced through a postjudgment motion to amend to be allocated in accordance with a Process Review of the Court Administrator's Office.
- Subsec. (g) requires the Court Administrator and the Commissioner of Motor Vehicles to report to the House and Senate Committees on Transportation and on Judiciary various statistics related to use of the Program.

**Sec. 2a**

- Directs the Commissioner of DMV to terminate driver's license suspensions pending on the effective date of the bill that were imposed pursuant to five (5) laws that authorize driver's license suspensions as a penalty for nondriving conduct, but that will no longer authorize license suspensions as a penalty after the bill takes effect.<sup>3</sup>
- The Commissioner is directed to terminate these suspensions without requiring an application or payment of a fee.

**II. GOING FORWARD****A. Repeal (or Amendment) of Laws Requiring License Suspensions for Various Nondriving Activities and Refusal of Registrations; Repeal of Criminal Underage Alcohol and Marijuana Offenses and Related Conforming Changes****Sec. 3**

- Repeals a law (23 V.S.A. § 305a) that directs the Commissioner of DMV not to renew a person's motor vehicle registration if the person is the sole registrant after the Commissioner receives notice from the Judicial Bureau that the person has not paid a traffic violation judgment.
- Repeals a law (23 V.S.A. § 2307) that addresses remedies the State may pursue if a person has not paid a traffic violation judgment.  
 → Under this law, a person against whom a traffic violation judgment is entered has 30 days to pay the judgment (unless this 30-day period has been extended by a judicial officer). If the judgment is not paid within the 30 days, the Judicial Bureau sends electronic notice to DMV. DMV then suspends the person's license after another 20 days, unless the person pays the judgment or becomes current under a payment plan within the 20 days. The suspension is for a 120-day period or until the judgment is satisfied, whichever is shorter. Even if a person who is suspended under this provision pays the judgment in full, the person must apply to DMV to terminate the suspension and pay a reinstatement fee (currently \$71).  
 → *Much of the substance this law is reenacted in Sec. 4 of the bill, with amendments.*

**Sec. 4**

- Reenacts **as amended** the traffic violation judgment enforcement language repealed in Sec. 3 of the bill.  
 → Under the reenacted language, the Judicial Bureau will notify DMV if a person fails to pay a traffic violation judgment within 30 days only if the judgment arises from a traffic violation for which imposition of points against a person's driving record is authorized by law. After another 20 days, DMV is directed to suspend the person's license for a 30-day period or until the amount due is satisfied, whichever is earlier.
- Directs the Judicial Bureau, at a minimum, to offer a payment plan option that allows a person to avoid suspension of his or her license by paying no more than \$30 per traffic violation judgment per month, not to exceed \$100 per month regardless of the number of outstanding judgments.

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<sup>3</sup> Secs. 5, 9, 10, 11, and 15 of the bill amend these laws to eliminate driver's license suspensions as a penalty.

- Eliminates license suspensions as a contempt tool that the Judicial Bureau may use to enforce its judgments. *See* subdivs. (c)(3)(C) and (c)(5)(B)(iii).

### **Sec. 5**

- Raises from \$300 to \$400 the potential fine for a first underage alcohol offense, and establishes a range of \$400 to \$600 for a second or subsequent offense.
- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of an underage alcohol offender who fails to successfully complete Diversion or who fails to pay a fine.
- Repeals a provision that requires the Judicial Bureau to notify DMV of an adjudication of a violation of this law and that requires DMV to maintain a record of all such adjudications.

### **Secs. 6–8**

- **Sec. 6** repeals a law that criminalizes third or subsequent underage alcohol-related offenses.
- **Secs. 7–8** are conforming changes related to the repeal in Sec. 6 of the bill.

### **Sec. 9**

- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of a person who fails to pay a fine in connection with an underage tobacco offense.

### **Sec. 10**

- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of a person under 18 years of age (or enrolled in school) who is convicted of a false public alarm offense.

### **Sec. 11**

- Raises from \$300 to \$400 the potential fine for a first underage civil marijuana offense, and establishes a range of \$400 to \$600 for a second or subsequent offense.
- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of an underage marijuana civil offender who fails to successfully complete Diversion or who fails to pay a fine.
- Repeals a provision that requires the Judicial Bureau to notify DMV of an adjudication of a violation of this law and that requires DMV to maintain a record of all such adjudications.

### **Sec. 12**

- Expresses legislative intent that any copies of the registries of underage alcohol and marijuana adjudications that DMV was required to maintain be destroyed.  
→ Requirements that DMV maintain these registries are repealed in Secs. 5 & 11 of the bill.

### **Secs. 13–14**

- **Sec. 13** repeals a law that criminalizes a third or subsequent offense by a person under 21 years of age for possession of one ounce or less of marijuana or five grams or less of hashish.
- **Sec. 14** is a conforming change related to the repeal in Sec. 13 of the bill.

**Sec. 15**

- Repeals language that directs the Commissioner of DMV to suspend a person's privilege to operate a motor vehicle as a result of nonpayment of the motor vehicle purchase and use tax.

**B. Amending the Criminal DLS Statute****Sec. 16**

- Criminalizes a 3rd offense for driving with a license suspended (DLS) when the underlying suspensions have resulted from the accumulation of points against a person's driving record, in connection with DLS offenses that occur on or after July 1, 2016.
- Resets from July 1, 2003 to December 1, 2016 the date for a civil DLS offense to count as a prior offense. Except for DLS offenses arising from major motor vehicle crimes and points-related DLS offenses, a person who has 5 prior civil DLS offenses is subject to criminal penalties for a 6th DLS offense.  
→ The rationale for resetting the clock on these prior civil DLS offenses is that many of them relate to suspensions for nonpayment of traffic violation judgments, and one of the goals of this bill is to enable people to clear their records related to unpaid traffic violation judgments.
- Repeals a provision that requires civil DLS offenses arising from suspensions for unpaid traffic violation judgments that have since been paid to not count as prior offenses. The Judiciary Committee heard testimony that this provision is administratively unenforceable.

**C. Assessment of Points Against a Person's Driving Record****Sec. 17**

- Doubles the assessment of points against a person's driving record for worksite speed violations where the Traffic Committee<sup>4</sup> has established special temporary speed limits. This provision addresses violations on State highways, including interstate highways.

**Sec. 18**

- Doubles the assessment of points against a person's driving record for worksite speed violations where a municipality has established special temporary speed limits.

**Sec. 19**

- Makes a technical correction to Vermont's basic speed limit law.

**Sec. 20**

- Amends Vermont's law prohibiting the handheld use of a portable electronic device while driving to provide for a person to be assessed:  
→ Five (5) points for a violation in a work zone or school zone.<sup>5</sup> See § 1095a(c)(2).

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<sup>4</sup> The Traffic Committee is a three-member committee comprising the Secretary of Transportation, the Commissioner of Motor Vehicles, and the Commissioner of Public Safety or their designees. See 19 V.S.A. § 1(24).

<sup>5</sup> Under the current handheld law, a person is assessed 2 points for a first work zone offense, and 5 points for a second or subsequent work zone offense. This section expands the points enhancement to apply also in school zones, and provides for the assessment of 5 points for all offenses, including first offenses.

→ Two (2) points for a violation outside a work zone or school zone.<sup>6</sup> *See* § 1095a(c)(3)

### **Sec. 21**

- Amends Vermont’s law prohibiting texting while driving to provide for a person to be assessed:
  - Seven (7) points for a texting violation in a work zone or school zone.<sup>7</sup>
  - Five (5) for a texting violation outside a work zone or school zone.<sup>8</sup>

### **Sec. 22**

- Amends Vermont’s schedule for the assessment of points against a person’s driving record for consistency with the changes in Secs. 20–21 and Sec. 29 of the bill and to make consistent the assessment of points for speeding offenses when a person is cited under Vermont’s default speed limit law<sup>9</sup> or is charged under Vermont’s criminal speeding law.<sup>10</sup>

## **D. Consideration of Ability to Pay in Judicial Bureau Hearings**

### **Sec. 23**

- Requires a Judicial Bureau hearing officer to consider evidence of ability to pay if offered by a defendant during a hearing on a matter under the Judicial Bureau’s jurisdiction.

## **E. DLS Diversion Program**

### **Sec. 24**

- Repeals the DLS Diversion Program effective July 1, 2016.
- The General Assembly established the DLS Diversion Program in 2012<sup>11</sup> in response to the number of persons “caught in a cycle of [license] suspensions due to an inability to meet the financial obligations of fees, fines, and subsequent increases to insurance rates” and to “avoid the spiral that may eventually result in a criminal suspension.”<sup>12</sup>
- The Statewide Driver Restoration Program established in Sec. 2 of the bill and the changes to the law going forward made in the bill obviates the need for the DLS Diversion Program.

## **F. Awareness of Traffic Violation Judgment Payment and Hearing Options**

### **Sec. 25**

- Subsec. (a) encourages the Criminal Justice Training Council to train enforcement officers about the existence of payment plan options for traffic violation judgments and encourages enforcement officers to mention these options to motorists when issuing a ticket.

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<sup>6</sup> Under current law, zero (0) points are assessed for a violation of the handheld law outside a work zone.

<sup>7</sup> The current points schedule does not distinguish between texting while driving in a work or school zone and texting while driving outside these areas.

<sup>8</sup> The 5 points assessed outside of work zones and school zones is the same as the amount of points assessed for a texting violation under current law (see the points schedule at 23 V.S.A. § 2502).

<sup>9</sup> 23 V.S.A. § 1081.

<sup>10</sup> 23 V.S.A. § 1097.

<sup>11</sup> *See* Act 147 of 2012, available at: <http://www.leg.state.vt.us/docs/2012/Acts/ACT147.pdf>

<sup>12</sup> *See* Act 147 of 2012, Sec. 1(c).

- Subsec. (b) encourages the Judicial Bureau to update the standard materials that enforcement officers provide to motorists who have been ticketed to notify them of payment plan options and of the right to request a hearing on ability to pay.
- Subsec. (c) encourages the Judicial Bureau to prominently display this information on its website.
- Subsec. (d) directs the Agency of Transportation to carry out a campaign to raise awareness of traffic violation judgment payment plan options and of a person's right to request a hearing on ability to pay.

## **G. Statistics**

### **Sec. 26**

- Directs the Court Administrator to submit statistics to the Committees on Judiciary to enable the committees to assess the before and after effects of the bill on the number of criminal DLS charges filed statewide.

### **Sec. 27**

- Directs the Court Administrator to submit statistics to the Committees on Judiciary and on Transportation related to collections on traffic violation judgments before and after the bill takes effect, as well as statistics related to usage of payment plans, hearings on ability to pay, and postjudgment motions to amend after the bill takes effect.

### **Sec. 28**

- Directs the Diversion Program to submit statistics to the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare to enable the committees to assess the before and after effects of the bill on the completion of Diversion Programs by youths cited for underage alcohol and marijuana violations.

## **H. Moving Violation Definition**

### **Sec. 29**

- Amends the definition of "moving violation" to eliminate an exception from the definition for child restraint system/child safety belt violations.
- Coupled with a change to the points schedule in Sec. 22 of the bill, the effect of this change is that a person who violates the law requiring children to be properly restrained in a motor vehicle is subject to an assessment of 2 points against his or her driving record.

## **I. Effective Dates**

### **Sec. 30**

- Establishes effective dates on passage for various sections of the bill, and on July 1, 2016 for the remaining sections.