

1 H.65

2 Introduced by Representatives Lippert of Hinesburg, O'Brien of Richmond,
3 Conquest of Newbury, Goodwin of Weston, Grad of Moretown,
4 Keenan of St. Albans City, Marek of Newfane, Miller of
5 Shaftsbury, Waite-Simpson of Essex, and Wizowaty of
6 Burlington

7 Referred to Committee on

8 Date:

9 Subject: Health; regulated drugs; limited immunity from liability for reporting
10 an overdose

11 Statement of purpose of bill as introduced: This bill proposes to grant limited
12 immunity from liability for:

13 (1) a person who, in good faith, seeks medical assistance for someone who
14 is experiencing a drug or alcohol overdose or other life-threatening medical
15 emergency; or

16 (2) a person who is experiencing a drug or alcohol overdose or other
17 life-threatening medical emergency and, in good faith, seeks medical
18 assistance for himself or herself or is the subject of a good faith request for
19 medical assistance.

1 An act relating to limited immunity from liability for reporting a drug or
2 alcohol overdose

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

4 Sec. 1. INTENT

5 It is the intent of the General Assembly to encourage a witness or victim of
6 a drug- or alcohol-related overdose to seek medical assistance in order to save
7 the life of an overdose victim by establishing a state policy of protecting the
8 witness or victim from prosecution and conviction for certain drug- and
9 alcohol-related crimes.

10 Sec. 2. 18 V.S.A. chapter 84, subchapter 3, which shall include §§ 4249–4254,
11 is added to read:

12 Subchapter 3. Miscellaneous

13 * * *

14 § 4254. IMMUNITY FROM LIABILITY

15 (a) As used in this section:

16 (1) “Drug or alcohol overdose” means an acute condition, including
17 physical illness, coma, mania, hysteria, or death resulting from the
18 consumption or use of a regulated drug or alcohol, which a layperson would
19 reasonably believe to be a drug or alcohol overdose that requires medical
20 assistance.

21 (2) “Medical assistance” means professional services provided to a
22 person experiencing a drug or alcohol overdose by a health care professional

1 ~~licensed, registered, or certified under state law who, acting within his or her~~
2 ~~lawful scope of practice, may provide diagnosis, treatment, or emergency~~
3 ~~services for a person experiencing a drug or alcohol overdose.~~

4 (b) A person who, in good faith, seeks medical assistance for someone who
5 is experiencing a drug or alcohol overdose or other life-threatening medical
6 emergency shall not be cited, arrested, or prosecuted for possessing,
7 dispensing, or being under the influence of a drug under this chapter or cited,
8 arrested, or prosecuted for possession of alcohol by someone under age 21
9 pursuant to 7 V.S.A §§ 656 and 657 or for providing to or enabling
10 consumption of alcohol by someone under age 21 pursuant to 7 V.S.A.
11 § 658(a)–(c).

12 (c) A person who is experiencing a drug or alcohol overdose or other
13 life-threatening medical emergency and, in good faith, seeks medical
14 assistance for himself or herself or is the subject of a good faith request for
15 medical assistance shall not be cited, arrested, or prosecuted for possessing,
16 dispensing, or being under the influence of a drug under this chapter or cited,
17 arrested, or prosecuted for possession of alcohol by someone under age 21
18 pursuant to 7 V.S.A. §§ 656 and 657 or for providing to or enabling
19 consumption of alcohol by someone under age 21 pursuant to 7 V.S.A.
20 § 658(a)–(c).

1 ~~(d) A person who seeks medical assistance for a drug or alcohol overdose~~
2 ~~or other life-threatening medical emergency pursuant to subsection (b) or (c) of~~
3 ~~this section shall not be subject to any of the penalties for violation of a~~
4 ~~restraining order for possessing, dispensing, or being under the influence of a~~
5 ~~drug or alcohol, for being at the scene of the drug or alcohol overdose, or for~~
6 ~~being within close proximity to any person at the scene of the drug or~~
7 ~~alcohol overdose.~~

8 ~~(e) A person who seeks medical assistance for a drug or alcohol overdose~~
9 ~~or other life-threatening medical emergency pursuant to subsection (b) or (c) of~~
10 ~~this section shall not be subject to any sanction for a violation of a condition of~~
11 ~~probation or parole for possessing, dispensing, or being under the influence of~~
12 ~~a drug or alcohol.~~

13 ~~(f)(1) A defendant may assert an affirmative defense to a charge of selling~~
14 ~~or dispensing a regulated drug with death resulting under section 4250 of this~~
15 ~~title if the defendant, in good faith, sought medical assistance for the deceased.~~

16 ~~(2) A defendant may assert an affirmative defense to a charge of~~
17 ~~criminal sale of a regulated drug if the prosecution relies on evidence obtained~~
18 ~~as a result of the defendant, in good faith, seeking medical assistance for~~
19 ~~someone, including himself or herself, experiencing a drug or alcohol overdose~~
20 ~~or other life-threatening medical emergency or if the defendant was the subject~~
21 ~~of a good faith request for health care. The affirmative defense shall not apply~~

1 ~~to offenses charged under subsection 4237(e) of this title (dispensing or selling~~
2 ~~on school grounds or abutting property).~~

3 (g) The act of seeking medical assistance for or by someone who is
4 experiencing a drug or alcohol overdose or other life-threatening medical
5 emergency shall be considered a mitigating circumstance at sentencing for a
6 violation of any other offense defined in this chapter.

7 (h) A person shall qualify for the immunity from liability provided in this
8 section only if the evidence for prosecution was gained as a result of the person
9 seeking medical assistance for a drug or alcohol overdose or other
10 life-threatening medical emergency.

11 (i) A person who seeks medical assistance for a drug or alcohol overdose or
12 other life-threatening medical emergency pursuant to subsection (b) or (c) of
13 this section shall not be subject to the provisions of subchapter 2 of this chapter
14 concerning property subject to forfeiture except that prima facie contraband
15 shall be subject to forfeiture.

16 (j) Nothing in this section shall be construed to bar the admissibility of any
17 evidence in connection with the investigation and prosecution of a crime with
18 regard to another defendant who does not independently qualify for protections
19 set forth in this section; nor with regard to other crimes committed by a person
20 who otherwise qualifies under this section; nor shall anything in this section be
21 construed to bar any seizure pursuant to law.

1 ~~Sec. 3. EFFECTIVE DATE~~

2 ~~This act shall take effect on passage and shall apply only to a person who~~
3 ~~seeks medical assistance for another in accordance with 18 V.S.A. § 4254(a) or~~
4 ~~(b) on or after the date of passage.~~

Sec. 1. INTENT

It is the intent of the General Assembly to encourage a witness or victim of a drug overdose to seek medical assistance in order to save the life of an overdose victim by establishing a state policy of protecting the witness or victim from prosecution and conviction for certain crimes. It is not the intent of the General Assembly to provide immunity from citation, arrest or prosecution for violation of 18 V.S.A. chapter 84 or citation, arrest, or prosecution for procuring, possessing, or consuming alcohol by someone under age 21 pursuant to 7 V.S.A §§ 656 and 657 or for providing to or enabling consumption of alcohol by someone under age 21 pursuant to 7 V.S.A. § 658(a)–(c) in cases where medical assistance has not been sought for someone experiencing an overdose.

Sec. 2. 18 V.S.A. chapter 84, subchapter 3, which shall include §§ 4249–4254, is added to read:

Subchapter 3. Miscellaneous

** * **

§ 4254. IMMUNITY FROM LIABILITY

(a) As used in this section:

(1) “Drug overdose” means an acute condition resulting from or believed to be resulting from the use of a regulated drug which a layperson would reasonably believe requires medical assistance. For purposes of this section, “regulated drug” shall include alcohol.

(2) “Medical assistance” means professional services provided to a person experiencing a drug overdose by a health care professional licensed, registered, or certified under state law who, acting within his or her lawful scope of practice, may provide diagnosis, treatment, or emergency services for a person experiencing a drug overdose.

(3) “Seeks medical assistance” shall include providing care to someone who is experiencing a drug overdose while awaiting the arrival of medical assistance to aid the overdose victim.

(b) A person who, in good faith and in a timely manner, seeks medical assistance for someone who is experiencing a drug overdose shall not be cited, arrested, or prosecuted for a violation of this chapter or cited, arrested, or prosecuted for procuring, possessing, or consuming alcohol by someone under age 21 pursuant to 7 V.S.A. §§ 656 and 657 or for providing to or enabling consumption of alcohol by someone under age 21 pursuant to 7 V.S.A. § 658(a)–(c).

(c) A person who is experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of a good faith request for medical assistance shall not be cited, arrested, or prosecuted for a violation of this chapter or cited, arrested, or prosecuted for procuring, possessing, or consuming alcohol by someone under age 21 pursuant to 7 V.S.A. §§ 656 and 657 or for providing to or enabling consumption of alcohol by someone under age 21 pursuant to 7 V.S.A. § 658(a)–(c).

(d) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to any of the penalties for violation of 13 V.S.A. § 1030 (violation of a protection order) for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

(e) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to any sanction for a violation of a condition of pretrial release, probation, furlough, or parole for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

(f) The act of seeking medical assistance for or by someone who is experiencing a drug overdose shall be considered a mitigating circumstance at sentencing for a violation of any other offense.

(g) The immunity provisions of this section apply only to the use and derivative use of evidence gained as a proximate result of the person's seeking medical assistance for a drug overdose, and do not preclude prosecution of the person on the basis of evidence obtained from an independent source.

(h) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to the provisions of subchapter 2 of this chapter concerning property subject to forfeiture, except that prima facie contraband shall be subject to forfeiture.

(i) Except in cases of reckless or intentional misconduct, law enforcement shall be immune from liability for citing or arresting a person who is later determined to qualify for immunity under this section.

Sec. 2a. REPORT

The Executive Director of the Department of State's Attorneys and Sheriffs and the Defender General shall each report to the Senate and House Committees on Judiciary on the implementation and effect of Sec. 2 of this act no later than November 2015.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage and shall apply only to a person who seeks medical assistance for a drug overdose in accordance with 18 V.S.A. § 4254 on or after the date of passage.