

2017 -- H 5209

=====  
LC000723  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

—————  
A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Representatives Amore, Cunha, and Tobon

Date Introduced: January 26, 2017

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-27-2 and 31-27-2.1 of the General Laws in Chapter 31-27  
2 entitled "Motor Vehicle Offenses" are hereby amended to read as follows:

3 **31-27-2. Driving under influence of liquor or drugs.**

4 (a) Whoever drives or otherwise operates any vehicle in the state while under the  
5 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in  
6 chapter 28 of title 21, or any combination of these, shall be guilty of a misdemeanor, except as  
7 provided in subdivision (d)(3), and shall be punished as provided in subsection (d).

8 (b) (1) Any person charged under subsection (a), whose blood alcohol concentration is  
9 eight one-hundredths of one percent (.08%) or more by weight, as shown by a chemical analysis  
10 of a blood, breath, or urine sample, shall be guilty of violating subsection (a). This provision shall  
11 not preclude a conviction based on other admissible evidence. Proof of guilt under this section  
12 may also be based on evidence that the person charged was under the influence of intoxicating  
13 liquor, drugs, toluene, or any controlled substance defined in chapter 28 of title 21, or any  
14 combination of these, to a degree that rendered the person incapable of safely operating a vehicle.  
15 The fact that any person charged with violating this section is, or has been, legally entitled to use  
16 alcohol or a drug shall not constitute a defense against any charge of violating this section.

17 (2) Whoever drives, or otherwise operates, any vehicle in the state with a blood presence  
18 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by  
19 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as

1 provided in subsection (d).

2 (c) In any criminal prosecution for a violation of subsection (a), evidence as to the  
3 amount of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of  
4 title 21, or any combination of these, in the defendant's blood at the time alleged as shown by a  
5 chemical analysis of the defendant's breath, blood, or urine or other bodily substance, shall be  
6 admissible and competent, provided that evidence is presented that the following conditions have  
7 been complied with:

8 (1) The defendant has consented to the taking of the test upon which the analysis is made.  
9 Evidence that the defendant had refused to submit to the test shall not be admissible unless the  
10 defendant elects to testify.

11 (2) A true copy of the report of the test result was mailed within seventy-two (72) hours  
12 of the taking of the test to the person submitting to a breath test.

13 (3) Any person submitting to a chemical test of blood, urine, or other body fluids shall  
14 have a true copy of the report of the test result mailed to him or her within thirty (30) days  
15 following the taking of the test.

16 (4) The test was performed according to methods and with equipment approved by the  
17 director of the department of health of the state of Rhode Island and by an authorized individual.

18 (5) Equipment used for the conduct of the tests by means of breath analysis had been  
19 tested for accuracy within thirty (30) days preceding the test by personnel qualified as  
20 hereinbefore provided, and breathalyzer operators shall be qualified and certified by the  
21 department of health within three hundred sixty-five (365) days of the test.

22 (6) The person arrested and charged with operating a motor vehicle while under the  
23 influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of  
24 title 21, or, any combination of these in violation of subsection (a), was afforded the opportunity  
25 to have an additional chemical test. The officer arresting or so charging the person shall have  
26 informed the person of this right and afforded him or her a reasonable opportunity to exercise this  
27 right, and a notation to this effect is made in the official records of the case in the police  
28 department. Refusal to permit an additional chemical test shall render incompetent and  
29 inadmissible in evidence the original report.

30 (d) (1) (i) Every person found to have violated subdivision (b)(1) shall be sentenced as  
31 follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one  
32 percent (.08%), but less than one-tenth of one percent (.1%), by weight, or who has a blood  
33 presence of any scheduled controlled substance as defined in subdivision (b)(2), shall be subject  
34 to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300);

1 shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or  
2 shall be imprisoned for up to one year. The sentence may be served in any unit of the adult  
3 correctional institutions in the discretion of the sentencing judge and/or shall be required to attend  
4 a special course on driving while intoxicated or under the influence of a controlled substance;  
5 provided, however, that the court may permit a servicemember or veteran to complete any court-  
6 approved counseling program administered or approved by the Veterans' Administration, and his  
7 or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.  
8 The sentencing judge or magistrate may prohibit that person from operating a motor vehicle that  
9 is not equipped with an ignition interlock system as provided in § 31-27-2.8.

10 (ii) Every person convicted of a first violation whose blood alcohol concentration is one-  
11 tenth of one percent (.1%) by weight or above, but less than fifteen hundredths of one percent  
12 (.15%), or whose blood alcohol concentration is unknown, shall be subject to a fine of not less  
13 than one hundred (\$100) dollars, nor more than four hundred dollars (\$400), and shall be required  
14 to perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned  
15 for up to one year. The sentence may be served in any unit of the adult correctional institutions in  
16 the discretion of the sentencing judge. The person's driving license shall be suspended for a  
17 period of three (3) months to twelve (12) months. The sentencing judge shall require attendance  
18 at a special course on driving while intoxicated or under the influence of a controlled substance  
19 and/or alcoholic or drug treatment for the individual; provided, however, that the court may  
20 permit a servicemember or veteran to complete any court-approved counseling program  
21 administered or approved by the Veterans' Administration. The sentencing judge or magistrate  
22 may prohibit that person from operating a motor vehicle that is not equipped with an ignition  
23 interlock system as provided in § 31-27-2.8.

24 (iii) Every person convicted of a first offense whose blood alcohol concentration is  
25 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,  
26 toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to a fine of  
27 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of  
28 public community restitution and/or shall be imprisoned for up to one year. The sentence may be  
29 served in any unit of the adult correctional institutions in the discretion of the sentencing judge.  
30 The person's driving license shall be suspended for a period of three (3) months to eighteen (18)  
31 months. The sentencing judge shall require attendance at a special course on driving while  
32 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for  
33 the individual; provided, however, that the court may permit a servicemember or veteran to  
34 complete any court-approved counseling program administered or approved by the Veterans'

1 Administration. The sentencing judge or magistrate shall prohibit that person from operating a  
2 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

3 (2) (i) Every person convicted of a second violation within a five-year (5) period with a  
4 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above, but less than  
5 fifteen hundredths of one percent (.15%), or whose blood alcohol concentration is unknown, or  
6 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every  
7 person convicted of a second violation within a five-year (5) period, regardless of whether the  
8 prior violation and subsequent conviction was a violation and subsequent conviction under this  
9 statute or under the driving under the influence of liquor or drugs statute of any other state, shall  
10 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall  
11 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to  
12 not less than ten (10) days, nor more than one year, in jail. The sentence may be served in any  
13 unit of the adult correctional institutions in the discretion of the sentencing judge; however, not  
14 less than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing  
15 judge shall require alcohol or drug treatment for the individual; provided, however, that the court  
16 may permit a servicemember or veteran to complete any court-approved counseling program  
17 administered or approved by the Veterans' Administration and shall prohibit that person from  
18 operating a motor vehicle that is not equipped with an ignition interlock system as provided in §  
19 31-27-2.8.

20 (ii) Every person convicted of a second violation within a five-year (5) period whose  
21 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above, by weight as  
22 shown by a chemical analysis of a blood, breath, or urine sample, or who is under the influence of  
23 a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to  
24 mandatory imprisonment of not less than six (6) months, nor more than one year; a mandatory  
25 fine of not less than one thousand dollars (\$1,000); and a mandatory license suspension for a  
26 period of two (2) years from the date of completion of the sentence imposed under this  
27 subsection. The sentencing judge shall require alcohol or drug treatment for the individual;  
28 provided, however, that the court may permit a servicemember or veteran to complete any court  
29 approved counseling program administered or approved by the Veterans' Administration. The  
30 sentencing judge or magistrate shall prohibit that person from operating a motor vehicle that is  
31 not equipped with an ignition interlock system as provided in § 31-27-2.8

32 (3) (i) Every person convicted of a third or subsequent violation within a ~~five-year (5)~~ ten  
33 year (10) period with a blood alcohol concentration of eight one-hundredths of one percent  
34 (.08%) or above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol

1 concentration is unknown or who has a blood presence of any scheduled controlled substance as  
2 defined in subdivision (b)(2), regardless of whether any prior violation and subsequent conviction  
3 was a violation and subsequent conviction under this statute or under the driving under the  
4 influence of liquor or drugs statute of any other state, shall be guilty of a felony and be subject to  
5 a mandatory fine of four hundred (\$400) dollars. The person's driving license shall be suspended  
6 for a period of two (2) years to three (3) years, and the individual shall be sentenced to not less  
7 than one year and not more than three (3) years in jail. The sentence may be served in any unit of  
8 the adult correctional institutions in the discretion of the sentencing judge; however, not less than  
9 forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall  
10 require alcohol or drug treatment for the individual; provided, however, that the court may permit  
11 a servicemember or veteran to complete any court-approved counseling program administered or  
12 approved by the Veterans' Administration, and shall prohibit that person from operating a motor  
13 vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

14 (ii) Every person convicted of a third or subsequent violation within a ~~five-year (5)~~ ten  
15 year (10) period whose blood alcohol concentration is fifteen hundredths of one percent (.15%)  
16 above by weight as shown by a chemical analysis of a blood, breath, or urine sample, or who is  
17 under the influence of a drug, toluene, or any controlled substance as defined in subdivision  
18 (b)(1), shall be subject to mandatory imprisonment of not less than three (3) years, nor more than  
19 five (5) years; a mandatory fine of not less than one thousand dollars (\$1,000), nor more than five  
20 thousand dollars (\$5,000); and a mandatory license suspension for a period of three (3) years  
21 from the date of completion of the sentence imposed under this subsection. The sentencing judge  
22 shall require alcohol or drug treatment for the individual. The sentencing judge or magistrate shall  
23 prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock  
24 system as provided in § 31-27-2.8.

25 (iii) In addition to the foregoing penalties, every person convicted of a third or  
26 subsequent violation within a ~~five-year (5)~~ ten year (10) period, regardless of whether any prior  
27 violation and subsequent conviction was a violation and subsequent conviction under this statute  
28 or under the driving under the influence of liquor or drugs statute of any other state, shall be  
29 subject, in the discretion of the sentencing judge, to having the vehicle owned and operated by the  
30 violator seized and sold by the state of Rhode Island, with all funds obtained by the sale to be  
31 transferred to the general fund.

32 (4) Whoever drives or otherwise operates any vehicle in the state while under the  
33 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in  
34 chapter 28 of title 21, or any combination of these, when his or her license to operate is

1 suspended, revoked, or cancelled for operating under the influence of a narcotic drug or  
2 intoxicating liquor, shall be guilty of a felony punishable by imprisonment for not more than three  
3 (3) years and by a fine of not more than three thousand dollars (\$3,000). The court shall require  
4 alcohol and/or drug treatment for the individual; provided, the penalties provided for in § 31-27-  
5 2(d)(4) shall not apply to an individual who has surrendered his or her license and served the  
6 court-ordered period of suspension, but who, for any reason, has not had his or her license  
7 reinstated after the period of suspension, revocation, or suspension has expired; provided, further,  
8 the individual shall be subject to the provisions of subdivision (d)(2)(i), (d)(2)(ii), (d)(3)(i),  
9 (d)(3)(ii), or (d)(3)(iii) regarding subsequent offenses, and any other applicable provision of this  
10 section.

11 (5) (i) For purposes of determining the period of license suspension, a prior violation  
12 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-  
13 2.1.

14 (ii) Any person over the age of eighteen (18) who is convicted under this section for  
15 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of  
16 these, while a child under the age of thirteen (13) years was present as a passenger in the motor  
17 vehicle when the offense was committed, may be sentenced to a term of imprisonment of not  
18 more than one year, and further, shall not be entitled to the benefit of suspension or deferment of  
19 this sentence. The sentence imposed under this section may be served in any unit of the adult  
20 correctional institutions in the discretion of the sentencing judge.

21 (6) (i) Any person convicted of a violation under this section shall pay a highway  
22 assessment fine of five hundred dollars (\$500) that shall be deposited into the general fund. The  
23 assessment provided for by this subsection shall be collected from a violator before any other  
24 fines authorized by this section.

25 (ii) Any person convicted of a violation under this section shall be assessed a fee of  
26 eighty-six dollars (\$86).

27 (7) (i) If the person convicted of violating this section is under the age of eighteen (18)  
28 years, for the first violation he or she shall be required to perform ten (10) to sixty (60) hours of  
29 public community restitution and the juvenile's driving license shall be suspended for a period of  
30 six (6) months, and may be suspended for a period up to eighteen (18) months. The sentencing  
31 judge shall also require attendance at a special course on driving while intoxicated or under the  
32 influence of a controlled substance and alcohol or drug education and/or treatment for the  
33 juvenile. The juvenile may also be required to pay a highway assessment fine of no more than  
34 five hundred dollars (\$500) and the assessment imposed shall be deposited into the general fund.

1 (ii) If the person convicted of violating this section is under the age of eighteen (18)  
2 years, for a second or subsequent violation regardless of whether any prior violation and  
3 subsequent conviction was a violation and subsequent under this statute or under the driving  
4 under the influence of liquor or drugs statute of any other state, he or she shall be subject to a  
5 mandatory suspension of his or her driving license until such time as he or she is twenty-one (21)  
6 years of age and may, in the discretion of the sentencing judge, also be sentenced to the Rhode  
7 Island training school for a period of not more than one year and/or a fine of not more than five  
8 hundred dollars (\$500).

9 (8) Any person convicted of a violation under this section may undergo a clinical  
10 assessment at the community college of Rhode Island's center for workforce and community  
11 education. Should this clinical assessment determine problems of alcohol, drug abuse, or  
12 psychological problems associated with alcoholic or drug abuse, this person shall be referred to  
13 an appropriate facility, licensed or approved by the department of behavioral healthcare,  
14 developmental disabilities and hospitals, for treatment placement, case management, and  
15 monitoring. In the case of a servicemember or veteran, the court may order that the person be  
16 evaluated through the Veterans' Administration. Should the clinical assessment determine  
17 problems of alcohol, drug abuse, or psychological problems associated with alcohol or drug  
18 abuse, the person may have their treatment, case management, and monitoring administered or  
19 approved by the Veterans' Administration.

20 (e) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol  
21 per one hundred (100) cubic centimeters of blood.

22 (f) (1) There is established an alcohol and drug safety unit within the division of motor  
23 vehicles to administer an alcohol safety action program. The program shall provide for placement  
24 and follow-up for persons who are required to pay the highway safety assessment. The alcohol  
25 and drug safety action program will be administered in conjunction with alcohol and drug  
26 programs licensed by the department of behavioral healthcare, developmental disabilities and  
27 hospitals.

28 (2) Persons convicted under the provisions of this chapter shall be required to attend a  
29 special course on driving while intoxicated or under the influence of a controlled substance,  
30 and/or participate in an alcohol or drug treatment program; provided, however, that the court may  
31 permit a servicemember or veteran to complete any court-approved counseling program  
32 administered or approved by the Veterans' Administration. The course shall take into  
33 consideration any language barrier that may exist as to any person ordered to attend, and shall  
34 provide for instruction reasonably calculated to communicate the purposes of the course in

1 accordance with the requirements of the subsection. Any costs reasonably incurred in connection  
2 with the provision of this accommodation shall be borne by the person being retrained. A copy of  
3 any violation under this section shall be forwarded by the court to the alcohol and drug safety  
4 unit. In the event that persons convicted under the provisions of this chapter fail to attend and  
5 complete the above course or treatment program, as ordered by the judge, then the person may be  
6 brought before the court, and after a hearing as to why the order of the court was not followed,  
7 may be sentenced to jail for a period not exceeding one year.

8 (3) The alcohol and drug safety action program within the division of motor vehicles  
9 shall be funded by general revenue appropriations.

10 (g) The director of the health department of the state of Rhode Island is empowered to  
11 make and file with the secretary of state regulations that prescribe the techniques and methods of  
12 chemical analysis of the person's body fluids or breath and the qualifications and certification of  
13 individuals authorized to administer this testing and analysis.

14 (h) Jurisdiction for misdemeanor violations of this section shall be with the district court  
15 for persons eighteen (18) years of age or older and to the family court for persons under the age  
16 of eighteen (18) years. The courts shall have full authority to impose any sentence authorized, and  
17 to order the suspension of any license, for violations of this section. All trials in the district court  
18 and family court of violations of the section shall be scheduled within thirty (30) days of the  
19 arraignment date. No continuance or postponement shall be granted except for good cause shown.  
20 Any continuances that are necessary shall be granted for the shortest practicable time. Trials in  
21 superior court are not required to be scheduled within thirty (30) days of the arraignment date.

22 (i) No fines, suspensions, assessments, alcohol or drug treatment programs, course on  
23 driving while intoxicated or under the influence of a controlled substance, public community  
24 restitution, or jail provided for under this section can be suspended.

25 (j) An order to attend a special course on driving while intoxicated that shall be  
26 administered in cooperation with a college or university accredited by the state, shall include a  
27 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars  
28 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into  
29 the general fund.

30 (k) For the purposes of this section, any test of a sample of blood, breath, or urine for the  
31 presence of alcohol that relies in whole or in part upon the principle of infrared light absorption is  
32 considered a chemical test.

33 (l) If any provision of this section, or the application of any provision, shall for any  
34 reason be judged invalid, such a judgment shall not affect, impair, or invalidate the remainder of

1 the section, but shall be confined in this effect to the provision or application directly involved in  
2 the controversy giving rise to the judgment.

3 (m) For the purposes of this section, "servicemember" means a person who is presently  
4 serving in the armed forces of the United States, including the Coast Guard, a reserve component  
5 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,  
6 including the Coast Guard of the United States, a reserve component thereof, or the National  
7 Guard, and has been discharged under other than dishonorable conditions.

8 **31-27-2.1. Refusal to submit to chemical test.**

9 (a) Any person who operates a motor vehicle within this state shall be deemed to have  
10 given his or her consent to chemical tests of his or her breath, blood, and/or urine for the purpose  
11 of determining the chemical content of his or her body fluids or breath. No more than two (2)  
12 complete tests, one for the presence of intoxicating liquor and one for the presence of toluene or  
13 any controlled substance, as defined in § 21-28-1.02(7), shall be administered at the direction of a  
14 law enforcement officer having reasonable grounds to believe the person to have been driving a  
15 motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any  
16 controlled substance, as defined in chapter 28 of title 21, or any combination of these. The  
17 director of the department of health is empowered to make and file, with the secretary of state,  
18 regulations that prescribe the techniques and methods of chemical analysis of the person's body  
19 fluids or breath and the qualifications and certification of individuals authorized to administer the  
20 testing and analysis.

21 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the  
22 person may file an affidavit with the division of motor vehicles stating the reasons why he or she  
23 cannot be required to take blood tests and a notation to this effect shall be made on his or her  
24 license. If that person is asked to submit to chemical tests as provided under this chapter, the  
25 person shall only be required to submit to chemical tests of his or her breath or urine. When a  
26 person is requested to submit to blood tests, only a physician or registered nurse, or a medical  
27 technician certified under regulations promulgated by the director of the department of health,  
28 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation  
29 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to  
30 have a physician of his or her own choosing, and at his or her own expense, administer chemical  
31 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction  
32 of a law enforcement officer. If a person, having been placed under arrest, refuses upon the  
33 request of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be  
34 given, but a judge or magistrate of the traffic tribunal or district court judge or magistrate, upon

1 receipt of a report of a law enforcement officer: that he or she had reasonable grounds to believe  
2 the arrested person had been driving a motor vehicle within this state under the influence of  
3 intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or  
4 any combination of these; that the person had been informed of his or her rights in accordance  
5 with § 31-27-3; that the person had been informed of the penalties incurred as a result of  
6 noncompliance with this section; and that the person had refused to submit to the tests upon the  
7 request of a law enforcement officer; shall promptly order that the person's operator's license or  
8 privilege to operate a motor vehicle in this state be immediately suspended, however, said  
9 suspension shall be subject to the hardship provisions enumerated in § 31-27-2.8. A traffic  
10 tribunal judge or magistrate, or a district court judge or magistrate, pursuant to the terms of  
11 subsection (c), shall order as follows:

12 (1) Impose, for the first violation, a fine in the amount of two hundred dollars (\$200) to  
13 five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of  
14 public community restitution. The person's driving license in this state shall be suspended for a  
15 period of six (6) months to one year. The traffic tribunal judge or magistrate shall require  
16 attendance at a special course on driving while intoxicated or under the influence of a controlled  
17 substance and/or alcohol or drug treatment for the individual. The traffic tribunal judge or  
18 magistrate may prohibit that person from operating a motor vehicle that is not equipped with an  
19 ignition interlock system as provided in § 31-27-2.8.

20 (2) Every person convicted for a second violation within a five-year (5) period shall be  
21 guilty of a misdemeanor; shall be imprisoned for not more than six (6) months; and shall pay a  
22 fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the  
23 person to perform sixty (60) to one hundred (100) hours of public community restitution; and the  
24 person's driving license in this state shall be suspended for a period of one year to two (2) years.  
25 The judge or magistrate shall require alcohol and/or drug treatment for the individual. The  
26 sentencing judge or magistrate shall prohibit that person from operating a motor vehicle that is  
27 not equipped with an ignition interlock system as provided in § 31-27-2.8.

28 (3) Every person convicted for a third or subsequent violation within a ~~five-year (5)~~ [ten](#)  
29 [year \(10\)](#) period shall be guilty of a misdemeanor; and shall be imprisoned for not more than one  
30 year; fined eight hundred dollars (\$800) to one thousand dollars (\$1,000); shall perform not less  
31 than one hundred (100) hours of public community restitution; and the person's operator's license  
32 in this state shall be suspended for a period of two (2) years to five (5) years. The sentencing  
33 judge or magistrate shall prohibit that person from operating a motor vehicle that is not equipped  
34 with an ignition interlock system as provided in § 31-27-2.8. The judge or magistrate shall

1 require alcohol or drug treatment for the individual. Provided, that prior to the reinstatement of a  
2 license to a person charged with a third or subsequent violation within a three-year (3) period, a  
3 hearing shall be held before a judge or magistrate. At the hearing, the judge or magistrate shall  
4 review the person's driving record, his or her employment history, family background, and any  
5 other pertinent factors that would indicate that the person has demonstrated behavior that  
6 warrants the reinstatement of his or her license.

7 (4) For purposes of determining the period of license suspension, a prior violation shall  
8 constitute any charge brought and sustained under the provisions of this section or § 31-27-2.

9 (5) In addition to any other fines, a highway safety assessment of five hundred dollars  
10 (\$500) shall be paid by any person found in violation of this section, the assessment to be  
11 deposited into the general fund. The assessment provided for by this subsection shall be collected  
12 from a violator before any other fines authorized by this section.

13 (6) In addition to any other fines and highway safety assessments, a two hundred dollar  
14 (\$200) assessment shall be paid by any person found in violation of this section to support the  
15 department of health's chemical testing programs outlined in § 31-27-2(4), that shall be deposited  
16 as general revenues, not restricted receipts.

17 (7) No fines, suspensions, assessments, alcohol or drug treatment programs, course on  
18 driving while intoxicated or under the influence of a controlled substance, or public community  
19 restitution provided for under this section can be suspended.

20 (c) Upon suspending or refusing to issue a license or permit as provided in subsection (a),  
21 the traffic tribunal or district court shall immediately notify the person involved in writing, and  
22 upon his or her request, within fifteen (15) days, shall afford the person an opportunity for a  
23 hearing as early as practical upon receipt of a request in writing. Upon a hearing, the judge may  
24 administer oaths and may issue subpoenas for the attendance of witnesses and the production of  
25 relevant books and papers. If the judge finds after the hearing that: (1) The law enforcement  
26 officer making the sworn report had reasonable grounds to believe that the arrested person had  
27 been driving a motor vehicle within this state while under the influence of intoxicating liquor,  
28 toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of  
29 these; (2) The person, while under arrest, refused to submit to the tests upon the request of a law  
30 enforcement officer; (3) The person had been informed of his or her rights in accordance with §  
31 31-27-3; and (4) The person had been informed of the penalties incurred as a result of  
32 noncompliance with this section, the judge shall sustain the violation. The judge shall then  
33 impose the penalties set forth in subsection (b). Action by the judge must be taken within seven  
34 (7) days after the hearing or it shall be presumed that the judge has refused to issue his or her

1 order of suspension.

2 (d) For the purposes of this section, any test of a sample of blood, breath, or urine for the  
3 presence of alcohol that relies, in whole or in part, upon the principle of infrared light absorption  
4 is considered a chemical test.

5 (e) If any provision of this section, or the application of any provision, shall, for any  
6 reason, be judged invalid, the judgment shall not affect, impair, or invalidate the remainder of the  
7 section, but shall be confined in this effect to the provisions or application directly involved in the  
8 controversy giving rise to the judgment.

9 SECTION 2. This act shall take effect upon passage and would apply to all convictions  
10 imposed before or after the effective date.

=====  
LC000723  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

\*\*\*

1           This act would extend the "lookback" period for third and subsequent offenses under  
2 §31-27-2 ("driving under influence of liquor or drugs") and §31-27-2.1 ("refusal to submit to  
3 chemical test") from five (5) years to ten (10) years.

4           This act would take effect upon passage and would apply to all convictions imposed  
5 before or after the effective date.

=====  
LC000723  
=====