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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Representatives Edwards, Coughlin, and Canario

Date Introduced: February 01, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-27-2, 31-27-2.1 and 31-27-2.5 of the General Laws in Chapter
2 31-27 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 hand delivered at the location of the
12 test or mailed within seventy-two (72) hours of the taking of the test to the person submitting to a
13 breath test.

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

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

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

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

31 (d) (1) (i) Every person found to have violated subdivision (b)(1) shall be sentenced as
32 follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one
33 percent (.08%), but less than one-tenth of one percent (.1%), by weight, or who has a blood
34 presence of any scheduled controlled substance as defined in subdivision (b)(2), shall be subject

1 to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300);
2 shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or
3 shall be imprisoned for up to one year. The sentence may be served in any unit of the adult
4 correctional institutions in the discretion of the sentencing judge and/or shall be required to attend
5 a special course on driving while intoxicated or under the influence of a controlled substance;
6 provided, however, that the court may permit a servicemember or veteran to complete any court-
7 approved counseling program administered or approved by the Veterans' Administration, and his
8 or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.
9 The sentencing judge or magistrate may prohibit that person from operating a motor vehicle that
10 is not equipped with an ignition interlock system as provided in § 31-27-2.8.

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

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

1 complete any court-approved counseling program administered or approved by the Veterans'
2 Administration. The sentencing judge or magistrate shall prohibit that person from operating a
3 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

4 (2) (i) Every person convicted of a second violation within a five-year (5) period with a
5 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above, but less than
6 fifteen hundredths of one percent (.15%), or whose blood alcohol concentration is unknown, or
7 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every
8 person convicted of a second violation within a five-year (5) period, regardless of whether the
9 prior violation and subsequent conviction was a violation and subsequent conviction under this
10 statute or under the driving under the influence of liquor or drugs statute of any other state, shall
11 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall
12 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to
13 not less than ten (10) days, nor more than one year, in jail. The sentence may be served in any
14 unit of the adult correctional institutions in the discretion of the sentencing judge; however, not
15 less than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing
16 judge shall require alcohol or drug treatment for the individual; provided, however, that the court
17 may permit a servicemember or veteran to complete any court-approved counseling program
18 administered or approved by the Veterans' Administration and shall prohibit that person from
19 operating a motor vehicle that is not equipped with an ignition interlock system as provided in §
20 31-27-2.8.

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

33 (3) (i) Every person convicted of a third or subsequent violation within a five-year (5)
34 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or

1 above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol
2 concentration is unknown or who has a blood presence of any scheduled controlled substance as
3 defined in subdivision (b)(2), regardless of whether any prior violation and subsequent conviction
4 was a violation and subsequent conviction under this statute or under the driving under the
5 influence of liquor or drugs statute of any other state, shall be guilty of a felony and be subject to
6 a mandatory fine of four hundred (\$400) dollars. The person's driving license shall be suspended
7 for a period of two (2) years to three (3) years, and the individual shall be sentenced to not less
8 than one year and not more than three (3) years in jail. The sentence may be served in any unit of
9 the adult correctional institutions in the discretion of the sentencing judge; however, not less than
10 forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall
11 require alcohol or drug treatment for the individual; provided, however, that the court may permit
12 a servicemember or veteran to complete any court-approved counseling program administered or
13 approved by the Veterans' Administration, and shall prohibit that person from operating a motor
14 vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

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

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

33 (4) Whoever drives or otherwise operates any vehicle in the state while under the
34 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in

1 chapter 28 of title 21, or any combination of these, when his or her license to operate is
2 suspended, revoked, or cancelled for operating under the influence of a narcotic drug or
3 intoxicating liquor, shall be guilty of a felony punishable by imprisonment for not more than three
4 (3) years and by a fine of not more than three thousand dollars (\$3,000). The court shall require
5 alcohol and/or drug treatment for the individual; provided, the penalties provided for in § 31-27-
6 2(d)(4) shall not apply to an individual who has surrendered his or her license and served the
7 court-ordered period of suspension, but who, for any reason, has not had his or her license
8 reinstated after the period of suspension, revocation, or suspension has expired; provided, further,
9 the individual shall be subject to the provisions of subdivision (d)(2)(i), (d)(2)(ii), (d)(3)(i),
10 (d)(3)(ii), or (d)(3)(iii) regarding subsequent offenses, and any other applicable provision of this
11 section.

12 (5) (i) For purposes of determining the period of license suspension, a prior violation
13 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-
14 2.1.

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

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

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

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

1 five hundred dollars (\$500) and the assessment imposed shall be deposited into the general fund.

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

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

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

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

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

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

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

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

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

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

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

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

34 (l) If any provision of this section, or the application of any provision, shall for any

1 reason be judged invalid, such a judgment shall not affect, impair, or invalidate the remainder of
2 the section, but shall be confined in this effect to the provision or application directly involved in
3 the controversy giving rise to the judgment.

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

9 **31-27-2.1. Refusal to submit to chemical test.**

10 (a) Any person who operates a motor vehicle within this state shall be deemed to have
11 given his or her consent to chemical tests of his or her breath, blood, and/or urine for the purpose
12 of determining the chemical content of his or her body fluids or breath. No more than two (2)
13 complete tests, one for the presence of intoxicating liquor and one for the presence of toluene or
14 any controlled substance, as defined in § 21-28-1.02(8), shall be administered at the direction of a
15 law enforcement officer having reasonable grounds to believe the person to have been driving a
16 motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any
17 controlled substance, as defined in chapter 28 of title 21, or any combination of these. The
18 director of the department of health is empowered to make and file, with the secretary of state,
19 regulations that prescribe the techniques and methods of chemical analysis of the person's body
20 fluids or breath and the qualifications and certification of individuals authorized to administer the
21 testing and analysis.

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

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

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

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

31 (3) Every person convicted for a third or subsequent violation within a five-year (5)
32 period, except with respect to cases of refusal to submit to a blood test, shall be guilty of a
33 misdemeanor; and shall be imprisoned for not more than one year; fined eight hundred dollars
34 (\$800) to one thousand dollars (\$1,000); shall perform not less than one hundred (100) hours of

1 public community restitution; and the person's operator's license in this state shall be suspended
2 for a period of two (2) years to five (5) years. The sentencing judge or magistrate shall prohibit
3 that person from operating a motor vehicle that is not equipped with an ignition interlock system
4 as provided in § 31-27-2.8. The judge or magistrate shall require alcohol or drug treatment for
5 the individual. Provided, that prior to the reinstatement of a license to a person charged with a
6 third or subsequent violation within a three-year (3) period, a hearing shall be held before a judge
7 or magistrate. At the hearing, the judge or magistrate shall review the person's driving record, his
8 or her employment history, family background, and any other pertinent factors that would
9 indicate that the person has demonstrated behavior that warrants the reinstatement of his or her
10 license.

11 (4) For a second violation within a five-year (5) period with respect to a case of a refusal
12 to submit to a blood test, a fine in the amount of six hundred dollars (\$600) to one thousand
13 dollars (\$1,000); the person shall perform sixty (60) to one hundred (100) hours of public
14 community restitution; and the person's driving license in this state shall be suspended for a
15 period of two (2) years. The judicial officer shall require alcohol and/or drug treatment for the
16 individual. The sentencing judicial officer shall prohibit that person from operating a motor
17 vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8. Such a
18 violation with respect to refusal to submit to a chemical blood test shall be a civil offense.

19 (5) For a third or subsequent violation within a five-year (5) period with respect to a case
20 of a refusal to submit to a blood test, a fine in the amount of eight hundred dollars (\$800) to one
21 thousand dollars (\$1,000); the person shall perform not less than one hundred (100) hours of
22 public community restitution; and the person's driving license in this state shall be suspended for
23 a period of two (2) to five (5) years. The sentencing judicial officer shall prohibit that person from
24 operating a motor vehicle that is not equipped with an ignition interlock system as provided in §
25 31-27-2.8. The judicial officer shall require alcohol and/or drug treatment for the individual. Such
26 a violation with respect to refusal to submit to a chemical test of blood shall be a civil offense.
27 Provided, that prior to the reinstatement of a license to a person charged with a third or
28 subsequent violation within a three-year (3) period, a hearing shall be held before a judicial
29 officer. At the hearing, the judicial officer shall review the person's driving record, his or her
30 employment history, family background, and any other pertinent factors that would indicate that
31 the person has demonstrated behavior that warrants the reinstatement of their license.

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

34 (7) In addition to any other fines, a highway safety assessment of five hundred dollars

1 (\$500) shall be paid by any person found in violation of this section, the assessment to be
2 deposited into the general fund. The assessment provided for by this subsection shall be collected
3 from a violator before any other fines authorized by this section.

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

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

11 (10) Implied consent notice for persons eighteen (18) years of age or older: "Rhode
12 Island law requires you to submit to a chemical test of your blood, breath, or urine for the purpose
13 of determining the chemical content of your body fluids or breath. If you refuse this testing,
14 certain penalties can be imposed and include the following: for a first offense your Rhode Island
15 driver's license or privilege to operate a motor vehicle in this state can be suspended for six (6)
16 months to one year or modified to permit operation in connection with an ignition interlock
17 device for a period specified by law, a fine from two hundred dollars (\$200) to five hundred
18 dollars (\$500) can be imposed, and you can be ordered to perform ten (10) to sixty (60) hours of
19 community service and attend a special course on driving while intoxicated or under the influence
20 of a controlled substance and/or alcohol or drug treatment. If you have had previous offenses
21 within the past five (5) years, your refusal to submit to a chemical test of breath or urine at this
22 time can have criminal penalties, including incarceration up to six (6) months for a second
23 offense and up to one year for a third or subsequent offense, and can carry increased license
24 suspension or ignition interlock period, fines and community service. All violators shall pay a
25 five hundred dollars (\$500) highway safety assessment fee, a two hundred dollars (\$200)
26 department of health chemical testing programs assessment fee, and a license reinstatement fee. If
27 you refuse to submit to a chemical test, you may be required to maintain proof of financial
28 responsibility for three (3) years and all Rhode Island registrations in your name may be
29 suspended unless proof of financial responsibility is provided for such vehicles. Refusal to submit
30 to a chemical test of blood shall not subject you to criminal penalties for the refusal itself, but if
31 you have previous offenses other civil penalties may increase. Your refusal to submit to a
32 chemical test may be offered in evidence against you at a criminal trial involving driving under
33 the influence of alcohol, controlled substances, or drugs. You have the right to be examined at
34 your own expense by a physician selected by you. If you submit to a chemical test at this time,

1 you have the right to have an additional chemical test performed at your own expense. You will
2 be afforded a reasonable opportunity to exercise these rights. Access to a telephone will be made
3 available for you to make those arrangements. You may now use a telephone." Use of this
4 implied consent notice shall serve as evidence that a person's consent to a chemical test is valid in
5 a prosecution involving driving under the influence of liquor, controlled substances, and/or drugs.

6 (c) Upon suspending or refusing to issue a license or permit as provided in subsection (a),
7 the traffic tribunal or district court shall immediately notify the person involved in writing, and
8 upon his or her request, within fifteen (15) days, shall afford the person an opportunity for a
9 hearing as early as practical upon receipt of a request in writing. Upon a hearing, the judge may
10 administer oaths and may issue subpoenas for the attendance of witnesses and the production of
11 relevant books and papers. If the judge finds after the hearing that:

12 (1) The law enforcement officer making the sworn report had reasonable grounds to
13 believe that the arrested person had been driving a motor vehicle within this state while under the
14 influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of
15 title 21, or any combination of these;

16 (2) The person, while under arrest, refused to submit to the tests upon the request of a law
17 enforcement officer;

18 (3) The person had been informed of his or her rights in accordance with § 31-27-3; and

19 (4) The person had been informed of the penalties incurred as a result of noncompliance
20 with this section, the judge shall sustain the violation. The judge shall then impose the penalties
21 set forth in subsection (b). Action by the judge must be taken within seven (7) days after the
22 hearing or it shall be presumed that the judge has refused to issue his or her order of suspension.

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

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

30 **31-27-2.5. Chemical tests to persons under eighteen (18) years of age -- Refusal --**
31 **License suspension.**

32 (a) Any person under eighteen (18) years of age who shall refuse to submit to a chemical
33 test as provided in § 31-27-2 shall have imposed all the penalties provided by § 31-27-2.1, but
34 shall have his or her license suspended on a first violation for six (6) months, subject to the terms

1 of subsection (e) of this section.

2 (b) Jurisdiction for violations of this section is given to the family court.

3 (c) If a person as set forth in subsection (a) of this section refuses, upon the request of a
4 law enforcement officer, to submit to a test as provided in § 31-27-2.1, none shall be given, but a
5 judge of the family court, upon receipt of a report or testimony of a law enforcement officer: that
6 he or she had probable cause to stop the arrested person and reasonable grounds to believe the
7 arrested person had been driving a motor vehicle within this state while impaired by intoxicating
8 liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any
9 combination of these; that the person had been informed of his or her rights in accordance with §
10 31-27-3; that the person had been informed of the ~~penalties to be incurred as a result of~~
11 ~~noncompliance with this section~~ implied consent notice contained in subsection (h) of this
12 section; and that the person had refused to submit to the test upon the request of a law
13 enforcement officer; shall promptly order a hearing on whether the person's operator's license or
14 privilege to operate a motor vehicle in this state shall be suspended. Upon suspension, the judge
15 shall order the license of the person to be surrendered to the department of administration,
16 division of motor vehicles, within three (3) days.

17 (d) If the person takes a test, as provided in § 31-27-2 and the test determines the person's
18 blood alcohol concentration to be at least two-hundredths of one percent (.02%) but less than one-
19 tenth of one percent (.1%) by weight, the person shall be determined to have been driving while
20 impaired. A judge of the family court shall, pursuant to the terms of subsection (e) of this section,
21 order as follows:

22 (1) A highway safety assessment of one hundred fifty dollars (\$150), or community
23 restitution in lieu of highway safety assessment shall be paid by any person found in violation of
24 this section. The assessment shall be deposited into the general fund.

25 (2) The person's driving license shall be suspended for six (6) months on a first violation,
26 and may be suspended for a period of up to twelve (12) months, provided the person also shall
27 attend a special course on driving while intoxicated and provided that the person shall also attend
28 an alcohol and/or drug treatment program if ordered by the family court judge. Failure or refusal
29 of the person to attend the course and/or alcohol or drug treatment program shall result in the
30 person's driving license being suspended until the course or treatment program has been
31 completed.

32 (3) On a second violation of this section, the person's driving license shall be suspended
33 until he or she is twenty-one (21) years of age. The sentencing judge shall require alcohol and/or
34 drug treatment for the individual.

1 (4) On a third or subsequent violation, the person's driving license shall be suspended for
2 an additional period of two (2) years and the sentencing judge shall require alcohol and/or drug
3 treatment for the individual.

4 (5) No suspensions, assessments, driving while intoxicated school, or alcohol and/or drug
5 treatment programs under this section can be suspended, shortened, altered, or changed.

6 (e) Upon suspending a license or permit as provided in subsection (a), (c), or (d) of this
7 section, the family court shall immediately notify the person involved, in writing, as well as the
8 custodial parent if the person is under the age of eighteen (18) years.

9 (f) The police department which charges any person under eighteen (18) years of age
10 with refusal to submit to a chemical test, driving while impaired by intoxicating liquors or drugs,
11 or driving while under the influence of liquor or drugs, shall ascertain the name and address of the
12 custodial parent of the person and shall notify the parent in writing within ten (10) days of the
13 charge.

14 (g) The department of administration, upon issuing a first license to a person sixteen (16)
15 or seventeen (17) years of age, shall provide a written notice of the penalties provided by this
16 section. Any violation of this section shall not be considered a criminal offense.

17 (h) Implied consent notice for persons under eighteen (18) years of age: "Rhode Island
18 law requires you to submit to a chemical test of your blood, breath, or urine for the purpose of
19 determining the chemical content of your body fluids or breath. If you refuse this testing, certain
20 penalties can be imposed. These penalties include the following: your Rhode Island driver's
21 license or privilege to operate a motor vehicle in this state can be suspended for six (6) months or
22 modified to permit operation in connect with an ignition interlock device for a period specified by
23 law, a fine from two hundred dollars (\$200) to five hundred dollars (\$500) can be imposed, and
24 you can be ordered to perform ten (10) to sixty (60) hours of community service and attend a
25 special course on driving while intoxicated or under the influence of a controlled substance and/or
26 alcohol or drug treatment. If you have had previous offenses within the past five (5) years, your
27 loss or modification of license, fine and community service sanctions can increase over those
28 provided for a first offense. All violators shall pay a five hundred dollars (\$500) highway safety
29 assessment fee, a two hundred dollars (\$200) department of health chemical testing programs fee,
30 and a license reinstatement fee. If you refuse to submit to a chemical test, you may be required to
31 maintain proof of financial responsibility for three (3) years. Your refusal to submit to a chemical
32 test may be offered in evidence against you at a trial involving driving under the influence of
33 alcohol, controlled substances, or drugs. Refusal to submit to a chemical test shall not be
34 considered a criminal offense. You have the right to be examined at your own expense by a

1 physician selected by you. If you submit to a chemical test at this time, you have the right to have
2 an additional chemical test performed at your own expense. You will be afforded a reasonable
3 opportunity to exercise these rights. Access to a telephone will be made available for you to make
4 those arrangements. You may now use the telephone." Use of this implied consent notice shall
5 serve as evidence that a person's consent to a chemical test is valid in a trial for driving under the
6 influence of liquor, controlled substances, and/or drugs.

7 SECTION 2. This act shall take effect on September 1, 2018.

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LC003585
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

1 This act would provide that evidence of a defendant's refusal to submit to a chemical test
2 would be admissible at trial for a violation of § 31-27-2 "driving under influence of liquor or
3 drugs."

4 This act would also establish language to give notice of implied consent in §§ 31-27-2.1
5 ("refusal to submit to chemical test") and 31-27-2.5 ("chemical tests to persons under eighteen
6 (18) years of age - refusal - license suspension").

7 This act would take effect on September 1, 2018.

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LC003585
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