

2010 -- H 7624

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Representatives Menard, Schadone, MacBeth, Baldelli-Hunt, and Corvese

Date Introduced: February 25, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           **31-27-2.1. Refusal to submit to chemical test.** -- (a) Any person who operates a motor  
2 vehicle within this state shall be deemed to have given his or her consent to chemical tests of his  
3 or her breath, blood, and/or urine for the purpose of determining the chemical content of his or  
4 her body fluids or breath. No more than two (2) complete tests, one for the presence of  
5 intoxicating liquor and one for the presence of toluene or any controlled substance, as defined in  
6 section 21-28-1.02(7), shall be administered at the direction of a law enforcement officer having  
7 reasonable grounds to believe the person to have been driving a motor vehicle within this state  
8 while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined  
9 in chapter 28 of title 21, or any combination of these. The director of the department of health is  
10 empowered to make and file with the secretary of state, regulations which prescribe the  
11 techniques and methods of chemical analysis of the person's body fluids or breath and the  
12 qualifications and certification of individuals authorized to administer the testing and analysis.

13           (b) If a person for religious or medical reasons cannot be subjected to blood tests, the  
14 person may file an affidavit with the division of motor vehicles stating the reasons why he or she  
15 cannot be required to take blood tests, and a notation to this effect shall be made on his or her  
16 license. If that person is asked to submit to chemical tests as provided under this chapter, the  
17 person shall only be required to submit to chemical tests of his or her breath or urine. When a  
18 person is requested to submit to blood tests, only a physician or registered nurse or a medical  
19 technician certified under regulations promulgated by the director of the department of health

1 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation  
2 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to  
3 have a physician of his or her own choosing and at his or her own expense administer chemical  
4 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction  
5 of a law enforcement officer. If a person having been placed under arrest refuses upon the request  
6 of a law enforcement officer to submit to the tests, as provided in section 31-27-2, none shall be  
7 given, but a [bail commissioner or](#) judge of the traffic tribunal or district court judge, upon receipt  
8 of a report of a law enforcement officer: that he or she had reasonable grounds to believe the  
9 arrested person had been driving a motor vehicle within this state under the influence of  
10 intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or  
11 any combination of these; that the person had been informed of his or her rights in accordance  
12 with section 31-27-3; that the person had been informed of the penalties incurred as a result of  
13 noncompliance with this section; and that the person had refused to submit to the tests upon the  
14 request of a law enforcement officer; shall promptly order that the person's operator's license or  
15 privilege to operate a motor vehicle in this state be immediately suspended and that the person's  
16 license be surrendered within five (5) days of notice of suspension. A traffic tribunal judge or a  
17 district court judge pursuant to the terms of subsection (c) of this section shall order as follows:

18 (1) Impose for the first violation a fine in the amount of two hundred dollars (\$200) to  
19 five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of  
20 public community restitution. The person's driving license in this state shall be suspended for a  
21 period of six (6) months to one year. The traffic tribunal judge shall require attendance at a  
22 special course on driving while intoxicated or under the influence of a controlled substance and/or  
23 alcohol or drug treatment for the individual.

24 (2) Every person convicted for a second violation within a five (5) year period shall be  
25 guilty of a misdemeanor, shall be imprisoned for not more than six (6) months and shall pay a  
26 fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the  
27 person to perform sixty (60) to one hundred (100) hours of public community restitution, and the  
28 person's driving license in this state shall be suspended for a period of one year to two (2) years.  
29 The judge shall require alcohol and/or drug treatment for the individual.

30 (3) Every person convicted for a third or subsequent violation within a five (5) year  
31 period shall be guilty of a misdemeanor and shall be imprisoned for not more than one year, fined  
32 eight hundred dollars (\$800) to one thousand dollars (\$1,000), order the person to perform not  
33 less than one hundred (100) hours of public community restitution, and the person's operator's  
34 license in this state shall be suspended for a period of two (2) years to five (5) years. The judge

1 shall require alcohol or drug treatment for the individual. Provided, that prior to the reinstatement  
2 of a license to a person charged with a third or subsequent violation within a three (3) year period,  
3 a hearing shall be held before a judge. At the hearing the judge shall review the person's driving  
4 record, his or her employment history, family background, and any other pertinent factors that  
5 would indicate that the person has demonstrated behavior which warrants the reinstatement of his  
6 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 section 31-27-  
9 2.

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

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

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

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

1 be taken within seven (7) days after the hearing, or it shall be presumed that the judge has refused  
2 to issue his or her order of suspension.

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

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

10 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would authorize a bail commissioner to order that a person's license be  
2 suspended immediately upon the report of a law enforcement officer that the person has refused a  
3 chemical test for DWI.

4           This act would take effect upon passage.

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