

2010 -- H 7962

LC02077

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Representative Anastasia P. Williams

Date Introduced: April 06, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

3 **31-27-2. Driving under influence of liquor or drugs.** -- (a) Whoever drives or
4 otherwise operates any vehicle in the state while under the influence of any intoxicating liquor,
5 drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any
6 combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3)
7 and shall be punished as provided in subsection (d) of this section.

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

18 (2) Whoever drives or otherwise operates any vehicle in the state with a blood presence
19 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by

1 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as
2 provided in subsection (d) of this section.

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

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

12 (2) A true copy of the report of the test result was mailed within seventy-two (72) hours
13 of the taking of the test to the person submitting to a 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) of this section was afforded the
26 opportunity to have an additional chemical test. The officer arresting or so charging the person
27 shall have informed the person of this right and afforded him or her a reasonable opportunity to
28 exercise this right, and a notation to this effect is made in the official records of the case in the
29 police 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) of this section shall be
32 sentenced as follows: for a first violation whose blood alcohol concentration is eight one-
33 hundredths of one percent (.08%) but less than one-tenth of one percent (.1%) by weight or who
34 has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) shall

1 be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred
2 dollars (\$300), shall be required to perform ten (10) to sixty (60) hours of public community
3 restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit
4 of the adult correctional institutions in the discretion of the sentencing judge and/or shall be
5 required to attend a special course on driving while intoxicated or under the influence of a
6 controlled substance, and his or her driver's license shall be suspended for thirty (30) days up to
7 one hundred eighty (180) days.

8 (ii) Every person convicted of a first violation whose blood alcohol concentration is one-
9 tenth of one percent (.1%) by weight or above but less than fifteen hundredths of one percent
10 (.15%) or whose blood alcohol concentration is unknown shall be subject to a fine of not less than
11 one hundred (\$100) dollars nor more than four hundred dollars (\$400) and shall be required to
12 perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned
13 for up to one year. The sentence may be served in any unit of the adult correctional institutions in
14 the discretion of the sentencing judge. The person's driving license shall be suspended for a
15 period of three (3) months to twelve (12) months. The sentencing judge shall require attendance
16 at a special course on driving while intoxicated or under the influence of a controlled substance
17 and/or alcoholic or drug treatment for the individual.

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

28 (2) (i) Every person convicted of a second violation within a five (5) year period with a
29 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than
30 fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or
31 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every
32 person convicted of a second violation within a five (5) year period regardless of whether the
33 prior violation and subsequent conviction was a violation and subsequent conviction under this
34 statute or under the driving under the influence of liquor or drugs statute of any other state, shall

1 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall
2 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to
3 not less than ten (10) days nor more than one year in jail. The sentence may be served in any unit
4 of the adult correctional institutions in the discretion of the sentencing judge; however, not less
5 than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge
6 shall require alcohol or drug treatment for the individual, and may prohibit that person from
7 operating a motor vehicle that is not equipped with an ignition interlock system for a period of
8 one year to two (2) years following the completion of the sentence as provided in section 31-27-
9 2.8, and shall issue an order of probation. As a condition of the probation order, in addition to
10 any other condition of probation, the person subject to probation shall be required to abstain from
11 consuming substances containing alcohol and shall wear a continuous alcohol monitoring device
12 for the duration of the probation period and shall be subject to the following:

13 (A) The person subject to probation shall be responsible for paying all costs associated
14 with the monitoring, including installation; and

15 (B) Tampering with or obstruction the continuous alcohol monitoring device shall
16 constitute noncompliance with the conditions of probation; and

17 (C) A person subject to probation may apply to the court for a hardship exemption to the
18 requirement that the person pay all costs associated with the monitoring.

19 As used in this section, a "continuous alcohol monitoring device" means a device
20 approved by the department of transportation that automatically tests breath, blood or transdermal
21 alcohol concentration levels once every hour and detects tampering attempts and regularly
22 transmits the monitoring data to an appropriate probation office.

23 (ii) Every person convicted of a second violation within a five (5) year period whose
24 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by weight as
25 shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of
26 a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to
27 mandatory imprisonment of not less than six (6) months nor more than one year, a mandatory fine
28 of not less than one thousand dollars (\$1,000) and a mandatory license suspension for a period of
29 two (2) years from the date of completion of the sentence imposed under this subsection-, and
30 shall issue an order of probation. As a condition of the probation order, in addition to any other
31 condition of probation, the person subject to probation shall be required to abstain from
32 consuming substances containing alcohol and shall wear a continuous alcohol monitoring device
33 for the duration of the probation period and shall be subject to the following:

34 (A) The person subject to probation shall be responsible for paying all costs associated

1 with the monitoring, including installation; and

2 (B) Tampering with or obstruction the continuous alcohol monitoring device shall
3 constitute noncompliance with the conditions of probation; and

4 (C) A person subject to probation may apply to the court for a hardship exemption to the
5 requirement that the person pay all costs associated with the monitoring.

6 As used in this section, a "continuous alcohol monitoring device" means a device
7 approved by the department of transportation that automatically tests breath, blood or transdermal
8 alcohol concentration levels once every hour and detects tampering attempts and regularly
9 transmits the monitoring data to an appropriate probation office.

10 (3) (i) Every person convicted of a third or subsequent violation within a five (5) year
11 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above
12 but less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is
13 unknown or who has a blood presence of any scheduled controlled substance as defined in
14 subdivision (b)(2) regardless of whether any prior violation and subsequent conviction was a
15 violation and subsequent conviction under this statute or under the driving under the influence of
16 liquor or drugs statute of any other state, shall be guilty of a felony and be subject to a mandatory
17 fine of four hundred (\$400) dollars. The person's driving license shall be suspended for a period
18 of two (2) years to three (3) years, and the individual shall be sentenced to not less than one year
19 and not more than three (3) years in jail. The sentence may be served in any unit of the adult
20 correctional institutions in the discretion of the sentencing judge; however, not less than forty-
21 eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall
22 require alcohol or drug treatment for the individual, and may prohibit that person from operating
23 a motor vehicle that is not equipped with an ignition interlock system for a period of two (2) years
24 following the completion of the sentence as provided in section 31-27-2.8, and shall issue an
25 order of probation. As a condition of the probation order, in addition to any other condition of
26 probation, the person subject to probation shall be required to abstain from consuming substances
27 containing alcohol and shall wear a continuous alcohol monitoring device for the duration of the
28 probation period and shall be subject to the following:

29 (A) The person subject to probation shall be responsible for paying all costs associated
30 with the monitoring, including installation; and

31 (B) Tampering with or obstruction the continuous alcohol monitoring device shall
32 constitute noncompliance with the conditions of probation; and

33 (C) A person subject to probation may apply to the court for a hardship exemption to the
34 requirement that the person pay all costs associated with the monitoring.

1 As used in this section, a "continuous alcohol monitoring device" means a device
2 approved by the department of transportation that automatically tests breath, blood or transdermal
3 alcohol concentration levels once every hour and detects tampering attempts and regularly
4 transmits the monitoring data to an appropriate probation office.

5 (ii) Every person convicted of a third or subsequent violation within a five (5) year
6 period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by
7 weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the
8 influence of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be
9 subject to mandatory imprisonment of not less than three (3) years nor more than five (5) years, a
10 mandatory fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars
11 (\$5,000) and a mandatory license suspension for a period of three (3) years from the date of
12 completion of the sentence imposed under this subsection.

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

20 (4) (i) For purposes of determining the period of license suspension, a prior violation
21 shall constitute any charge brought and sustained under the provisions of this section or section
22 31-27-2.1.

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

30 (5) (i) Any person convicted of a violation under this section shall pay a highway
31 assessment fine of five hundred dollars (\$500) which shall be deposited into the general fund. The
32 assessment provided for by this subsection shall be collected from a violator before any other
33 fines authorized by this section.

34 (ii) Any person convicted of a violation under this section shall be assessed a fee. The

1 fee shall be as follows:

2 FISCAL YEAR	FISCAL YEAR	FISCAL YEAR
3 1993-1995	1996-1999	2000-2010
4 \$147	\$173	\$86

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

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

21 (7) Any person convicted of a violation under this section may undergo a clinical
22 assessment at a facility approved by the department of mental health retardation and hospitals.
23 Should this clinical assessment determine problems of alcohol, drug abuse, or psychological
24 problems associated with alcoholic or drug abuse, this person shall be referred to the T.A.S.C.
25 (treatment alternatives to street crime) program for treatment placement, case management, and
26 monitoring.

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

29 (f) (1) There is established an alcohol and drug safety unit within the division of motor
30 vehicles to administer an alcohol safety action program. The program shall provide for placement
31 and follow-up for persons who are required to pay the highway safety assessment. The alcohol
32 and drug safety action program will be administered in conjunction with alcohol and drug
33 programs within the department of mental health retardation and hospitals.

34 (2) Persons convicted under the provisions of this chapter shall be required to attend a

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

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

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

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

26 (i) No fines, suspensions, assessments, alcohol or drug treatment programs, course on
27 driving while intoxicated or under the influence of a controlled substance, public community
28 restitution, [mandatory probation](#), or jail provided for under this section can be suspended.

29 (j) An order to attend a special course on driving while intoxicated that shall be
30 administered in cooperation with a college or university accredited by the state, shall include a
31 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
32 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
33 the general fund.

34 (k) For the purposes of this section, any test of a sample of blood, breath, or urine for the

1 presence of alcohol, which relies in whole or in part upon the principle of infrared light
2 absorption is considered a chemical test.

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

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

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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 impose a period of probation in specified instances of driving under the
2 influence of liquor or drugs and enhanced conditions of probation such as abstaining from alcohol
3 and the mandatory use of an alcohol monitoring device.

4 This act would take effect upon passage.

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