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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES – MOTOR VEHICLE OFFENSES

Introduced By: Senators Archambault, McCaffrey, Ruggerio, Lombardi, and Jabour

Date Introduced: March 29, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 31-27-2, 31-27-2.1 and 31-27-2.8 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           (1) Notwithstanding any other sentencing and disposition provisions contained in this  
9 chapter, if the district court judge or magistrate makes a finding that a motorist was operating a  
10 vehicle in this state while under the influence of drugs, toluene, or any controlled substance but  
11 not intoxicating liquor based on a preliminary breath test, results from a breathalyzer which  
12 indicates no blood alcohol concentration, or both, the judge or magistrate may exercise their  
13 discretion and eliminate the requirement of an ignition interlock system, provided that blood  
14 and/or urine testing is mandated as a condition to operating a motor vehicle.

15           (b) (1) Any person charged under subsection (a), whose blood alcohol concentration is  
16 eight one-hundredths of one percent (.08%) or more by weight, as shown by a chemical analysis  
17 of a blood, breath, or urine sample, shall be guilty of violating subsection (a). This provision shall  
18 not preclude a conviction based on other admissible evidence. Proof of guilt under this section  
19 may also be based on evidence that the person charged was under the influence of intoxicating

1 liquor, drugs, toluene, or any controlled substance defined in chapter 28 of title 21, or any  
2 combination of these, to a degree that rendered the person incapable of safely operating a vehicle.  
3 The fact that any person charged with violating this section is, or has been, legally entitled to use  
4 alcohol or a drug shall not constitute a defense against any charge of violating this section.

5 (2) Whoever drives, or otherwise operates, any vehicle in the state with a blood presence  
6 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by  
7 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as  
8 provided in subsection (d).

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

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

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

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

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

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

29 (6) The person arrested and charged with operating a motor vehicle while under the  
30 influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of  
31 title 21, or, any combination of these in violation of subsection (a), was afforded the opportunity  
32 to have an additional chemical test. The officer arresting or so charging the person shall have  
33 informed the person of this right and afforded him or her a reasonable opportunity to exercise this  
34 right, and a notation to this effect is made in the official records of the case in the police

1 department. Refusal to permit an additional chemical test shall render incompetent and  
2 inadmissible in evidence the original report.

3 (d) (1) (i) Every person found to have violated subdivision (b)(1) shall be sentenced as  
4 follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one  
5 percent (.08%), but less than one-tenth of one percent (.1%), by weight, or who has a blood  
6 presence of any scheduled controlled substance as defined in subdivision (b)(2), shall be subject  
7 to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300);  
8 shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or  
9 shall be imprisoned for up to one year. The sentence may be served in any unit of the adult  
10 correctional institutions in the discretion of the sentencing judge and/or shall be required to attend  
11 a special course on driving while intoxicated or under the influence of a controlled substance;  
12 provided, however, that the court may permit a servicemember or veteran to complete any court-  
13 approved counseling program administered or approved by the Veterans' Administration, and his  
14 or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.  
15 The sentencing judge or magistrate may prohibit that person from operating a motor vehicle that  
16 is not equipped with an ignition interlock system [and/or blood and urine testing](#) as provided in §  
17 31-27-2.8.

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

32 (iii) Every person convicted of a first offense whose blood alcohol concentration is  
33 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,  
34 toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to a fine of

1 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of  
2 public community restitution and/or shall be imprisoned for up to one year. The sentence may be  
3 served in any unit of the adult correctional institutions in the discretion of the sentencing judge.  
4 The person's driving license shall be suspended for a period of three (3) months to eighteen (18)  
5 months. The sentencing judge shall require attendance at a special course on driving while  
6 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for  
7 the individual; provided, however, that the court may permit a servicemember or veteran to  
8 complete any court-approved counseling program administered or approved by the Veterans'  
9 Administration. The sentencing judge or magistrate shall prohibit that person from operating a  
10 motor vehicle that is not equipped with an ignition interlock system [and/or blood and urine](#)  
11 [testing](#) as provided in § 31-27-2.8.

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

29 (ii) Every person convicted of a second violation within a five-year (5) period whose  
30 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above, by weight as  
31 shown by a chemical analysis of a blood, breath, or urine sample, or who is under the influence of  
32 a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to  
33 mandatory imprisonment of not less than six (6) months, nor more than one year; a mandatory  
34 fine of not less than one thousand dollars (\$1,000); and a mandatory license suspension for a

1 period of two (2) years from the date of completion of the sentence imposed under this  
2 subsection. The sentencing judge shall require alcohol or drug treatment for the individual;  
3 provided, however, that the court may permit a servicemember or veteran to complete any court  
4 approved counseling program administered or approved by the Veterans' Administration. The  
5 sentencing judge or magistrate shall prohibit that person from operating a motor vehicle that is  
6 not equipped with an ignition interlock system [and/or blood and urine testing](#) as provided in § 31-  
7 27-2.8

8 (3) (i) Every person convicted of a third or subsequent violation within a five-year (5)  
9 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or  
10 above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol  
11 concentration is unknown or who has a blood presence of any scheduled controlled substance as  
12 defined in subdivision (b)(2), regardless of whether any prior violation and subsequent conviction  
13 was a violation and subsequent conviction under this statute or under the driving under the  
14 influence of liquor or drugs statute of any other state, shall be guilty of a felony and be subject to  
15 a mandatory fine of four hundred (\$400) dollars. The person's driving license shall be suspended  
16 for a period of two (2) years to three (3) years, and the individual shall be sentenced to not less  
17 than one year and not more than three (3) years in jail. The sentence may be served in any unit of  
18 the adult correctional institutions in the discretion of the sentencing judge; however, not less than  
19 forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall  
20 require alcohol or drug treatment for the individual; provided, however, that the court may permit  
21 a servicemember or veteran to complete any court-approved counseling program administered or  
22 approved by the Veterans' Administration, and shall prohibit that person from operating a motor  
23 vehicle that is not equipped with an ignition interlock system [and/or blood and urine testing](#) as  
24 provided in § 31-27-2.8.

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

1 [and/or blood and urine testing](#) as provided in § 31-27-2.8.

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

9 (4) Whoever drives or otherwise operates any vehicle in the state while under the  
10 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in  
11 chapter 28 of title 21, or any combination of these, when his or her license to operate is  
12 suspended, revoked, or cancelled for operating under the influence of a narcotic drug or  
13 intoxicating liquor, shall be guilty of a felony punishable by imprisonment for not more than three  
14 (3) years and by a fine of not more than three thousand dollars (\$3,000). The court shall require  
15 alcohol and/or drug treatment for the individual; provided, the penalties provided for in § 31-27-  
16 2(d)(4) shall not apply to an individual who has surrendered his or her license and served the  
17 court-ordered period of suspension, but who, for any reason, has not had his or her license  
18 reinstated after the period of suspension, revocation, or suspension has expired; provided, further,  
19 the individual shall be subject to the provisions of subdivision (d)(2)(i), (d)(2)(ii), (d)(3)(i),  
20 (d)(3)(ii), or (d)(3)(iii) regarding subsequent offenses, and any other applicable provision of this  
21 section.

22 (5) (i) For purposes of determining the period of license suspension, a prior violation  
23 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-  
24 2.1.

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

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

1 fines authorized by this section.

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

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

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

20 (8) Any person convicted of a violation under this section may undergo a clinical  
21 assessment at the community college of Rhode Island's center for workforce and community  
22 education. Should this clinical assessment determine problems of alcohol, drug abuse, or  
23 psychological problems associated with alcoholic or drug abuse, this person shall be referred to  
24 an appropriate facility, licensed or approved by the department of behavioral healthcare,  
25 developmental disabilities and hospitals, for treatment placement, case management, and  
26 monitoring. In the case of a servicemember or veteran, the court may order that the person be  
27 evaluated through the Veterans' Administration. Should the clinical assessment determine  
28 problems of alcohol, drug abuse, or psychological problems associated with alcohol or drug  
29 abuse, the person may have their treatment, case management, and monitoring administered or  
30 approved by the Veterans' Administration.

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

33 (f) (1) There is established an alcohol and drug safety unit within the division of motor  
34 vehicles to administer an alcohol safety action program. The program shall provide for placement

1 and follow-up for persons who are required to pay the highway safety assessment. The alcohol  
2 and drug safety action program will be administered in conjunction with alcohol and drug  
3 programs licensed by the department of behavioral healthcare, developmental disabilities and  
4 hospitals.

5 (2) Persons convicted under the provisions of this chapter shall be required to attend a  
6 special course on driving while intoxicated or under the influence of a controlled substance,  
7 and/or participate in an alcohol or drug treatment program; provided, however, that the court may  
8 permit a servicemember or veteran to complete any court-approved counseling program  
9 administered or approved by the Veterans' Administration. The course shall take into  
10 consideration any language barrier that may exist as to any person ordered to attend, and shall  
11 provide for instruction reasonably calculated to communicate the purposes of the course in  
12 accordance with the requirements of the subsection. Any costs reasonably incurred in connection  
13 with the provision of this accommodation shall be borne by the person being retrained. A copy of  
14 any violation under this section shall be forwarded by the court to the alcohol and drug safety  
15 unit. In the event that persons convicted under the provisions of this chapter fail to attend and  
16 complete the above course or treatment program, as ordered by the judge, then the person may be  
17 brought before the court, and after a hearing as to why the order of the court was not followed,  
18 may be sentenced to jail for a period not exceeding one year.

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

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

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

33 (i) No fines, suspensions, assessments, alcohol or drug treatment programs, course on  
34 driving while intoxicated or under the influence of a controlled substance, public community



1 restitution, or jail provided for under this section can be suspended.

2 (j) An order to attend a special course on driving while intoxicated that shall be  
3 administered in cooperation with a college or university accredited by the state, shall include a  
4 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars  
5 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into  
6 the general fund.

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

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

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

19 **31-27-2.1. Refusal to submit to chemical test.**

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

32 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the  
33 person may file an affidavit with the division of motor vehicles stating the reasons why he or she  
34 cannot be required to take blood tests and a notation to this effect shall be made on his or her

1 license. If that person is asked to submit to chemical tests as provided under this chapter, the  
2 person shall only be required to submit to chemical tests of his or her breath or urine. When a  
3 person is requested to submit to blood tests, only a physician or registered nurse, or a medical  
4 technician certified under regulations promulgated by the director of the department of health,  
5 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation  
6 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to  
7 have a physician of his or her own choosing, and at his or her own expense, administer chemical  
8 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction  
9 of a law enforcement officer. If a person, having been placed under arrest, refuses upon the  
10 request of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be  
11 given;

12 (1) At the initial traffic tribunal appearance, but a judge or magistrate of the traffic  
13 tribunal or district court judge or magistrate, upon receipt of a report of a law enforcement  
14 officer: that he or she had shall review the incident, accident and/or arrest report to determine if  
15 there exists reasonable grounds to believe the arrested person had been driving a motor vehicle  
16 within this state under the influence of intoxicating liquor, toluene, or any controlled substance,  
17 as defined in chapter 28 of title 21, or any combination of these; that the person had been  
18 informed of his or her rights in accordance with § 31-27-3; The judge or magistrate shall  
19 determine if that the person had been informed of the penalties incurred as a result of  
20 noncompliance with this section; and that the person had refused to submit to the tests upon the  
21 request of a law enforcement officer;

22 (2) If the judge or magistrate determines that §31-27-2.1(b)(i) has been satisfied, they  
23 shall promptly order that the person's operator's license or privilege to operate a motor vehicle in  
24 this state be immediately suspended, however, said suspension shall be subject to the hardship  
25 provisions enumerated in § 31-27-2.8.

26 (c) A traffic tribunal judge or magistrate, or a district court judge or magistrate, pursuant  
27 to the terms of subsection ~~(e)~~ (d) of this section, shall order as follows:

28 (1) Impose, for the first violation, a fine in the amount of two hundred dollars (\$200) to  
29 five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of  
30 public community restitution. The person's driving license in this state shall be suspended for a  
31 period of six (6) months to one year. The traffic tribunal judge or magistrate shall require  
32 attendance at a special course on driving while intoxicated or under the influence of a controlled  
33 substance and/or alcohol or drug treatment for the individual. The traffic tribunal judge or  
34 magistrate may prohibit that person from operating a motor vehicle that is not equipped with an

1 ignition interlock system [and/or blood and urine testing](#) as provided in § 31-27-2.8.

2 (2) Every person convicted for a second violation within a five-year (5) period shall be  
3 guilty of a misdemeanor; shall be imprisoned for not more than six (6) months; and shall pay a  
4 fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the  
5 person to perform sixty (60) to one hundred (100) hours of public community restitution; and the  
6 person's driving license in this state shall be suspended for a period of one year to two (2) years.  
7 The judge or magistrate shall require alcohol and/or drug treatment for the individual. The  
8 sentencing judge or magistrate shall prohibit that person from operating a motor vehicle that is  
9 not equipped with an ignition interlock system [and/or blood and urine testing](#) as provided in § 31-  
10 27-2.8.

11 (3) Every person convicted for a third or subsequent violation within a five-year (5)  
12 period shall be guilty of a misdemeanor; and shall be imprisoned for not more than one year;  
13 fined eight hundred dollars (\$800) to one thousand dollars (\$1,000); shall perform not less than  
14 one hundred (100) hours of public community restitution; and the person's operator's license in  
15 this state shall be suspended for a period of two (2) years to five (5) years. The sentencing judge  
16 or magistrate shall prohibit that person from operating a motor vehicle that is not equipped with  
17 an ignition interlock system [and/or blood and urine testing](#) as provided in § 31-27-2.8. The judge  
18 or magistrate shall require alcohol or drug treatment for the individual. Provided, that prior to the  
19 reinstatement of a license to a person charged with a third or subsequent violation within a three-  
20 year (3) period, a hearing shall be held before a judge or magistrate. At the hearing, the judge or  
21 magistrate shall review the person's driving record, his or her employment history, family  
22 background, and any other pertinent factors that would indicate that the person has demonstrated  
23 behavior that warrants the reinstatement of his or her license.

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

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

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

34 (7) No fines, suspensions, assessments, alcohol or drug treatment programs, course on

1 driving while intoxicated or under the influence of a controlled substance, or public community  
2 restitution provided for under this section can be suspended.

3 ~~(e)~~(d) Upon suspending or refusing to issue a license or permit as provided in subsection  
4 (a), the traffic tribunal or district court shall immediately notify the person involved in writing,  
5 and upon his or her request, within fifteen (15) days, ~~shall~~ afford the person an opportunity for a  
6 hearing as early as practical upon receipt of a request in writing. Upon a hearing, the judge may  
7 administer oaths and may issue subpoenas for the attendance of witnesses and the production of  
8 relevant books and papers. If the judge finds after the hearing that: (1) The law enforcement  
9 officer making the sworn report had reasonable grounds to believe that the arrested person had  
10 been driving a motor vehicle within this state while under the influence of intoxicating liquor,  
11 toluene, or any controlled substance, as defined in chapter 28 of title 21, or any combination of  
12 these; (2) The person, while under arrest, refused to submit to the tests upon the request of a law  
13 enforcement officer; (3) The person had been informed of his or her rights in accordance with §  
14 31-27-3; and (4) The person had been informed of the penalties incurred as a result of  
15 noncompliance with this section, the judge shall sustain the violation. The judge shall then  
16 impose the penalties set forth in subsection ~~(b)~~(c). Action by the judge must be taken within  
17 seven (7) days after the hearing or it shall be presumed that the judge has refused to issue his or  
18 her order of suspension.

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

22 ~~(e)~~(f) If any provision of this section, or the application of any provision, shall, for any  
23 reason, be judged invalid, the judgment shall not affect, impair, or invalidate the remainder of the  
24 section, but shall be confined in this effect to the provisions or application directly involved in the  
25 controversy giving rise to the judgment.

26 **31-27-2.8. Ignition interlock system imposed as part of sentence -- Requirements.**

27 (a) Any person convicted under the provisions of §§ 31-27-2(d)(1), 31-27-2(d)(2), 31-27-  
28 2(d)(3)(i) or 31-27-2(d)(3)(ii), or whose violation is sustained under the provisions of ~~§ 31-27-~~  
29 ~~2-1(b)(1)~~ §31-27-2.1(b)(2), may be prohibited by the sentencing judge or magistrate from  
30 operating a motor vehicle that is not equipped with an ignition interlock system, and/or blood and  
31 urine testing by a licensed physician with knowledge and clinical experience in the diagnosis and  
32 treatment of drug related disorders, a licensed or certified psychologist, social worker, or EAP  
33 professional with like knowledge, or a substance abuse counselor certified by the National  
34 Association of Alcohol and Drug Abuse Counselors (all of whom shall be licensed in Rhode

1 [Island\), pursuant to this section.](#)

2 (b) Notwithstanding any other provisions contained in this chapter, ~~after a finding of~~  
3 ~~eligibility,~~ any mandatory period of license suspension shall, upon request, be reduced by the  
4 imposition of an ignition interlock system [and/or blood and urine testing](#) ordered by the court or  
5 traffic tribunal as follows:

6 (1) For a violation of § 31-27-2(d)(1), a person shall be subject to a minimum thirty-day  
7 (30) license suspension and an imposition of an ignition interlock system [and/or blood and urine](#)  
8 [testing](#) for three (3) months to one year.

9 (2) For a violation of ~~§ 31-27-2.1(b)(1)~~ [§31-27-2.1\(c\)\(1\)](#), a person shall be subject to a  
10 minimum thirty-day (30) license suspension and an imposition of an ignition interlock system  
11 [and/or blood and urine testing](#) for a period of six (6) months to two (2) years.

12 (3) For a violation of § 31-27-2(d)(2), a person shall be subject to a minimum forty-five-  
13 day (45) license suspension and an imposition of an ignition interlock system [and/or blood and](#)  
14 [urine testing](#) for a period of six (6) months to two (2) years.

15 (4) For a violation of ~~§ 31-27-2.1(b)(2)~~ [§31-27-2.1\(c\)\(2\)](#), a person shall be subject to a  
16 minimum sixty-day (60) license suspension and an imposition of an ignition interlock system  
17 [and/or blood and urine testing](#) for a period of one to four (4) years.

18 (5) For a violation of § 31-27-2(d)(3), a person shall be subject to a minimum sixty-day  
19 (60) license suspension and imposition of an ignition interlock system [and/or blood and urine](#)  
20 [testing](#) for a period of one to four (4) years.

21 (6) For a violation of ~~§ 31-27-2.1(b)(3)~~ [§31-27-2.1\(c\)\(3\)](#), a person shall be subject to a  
22 minimum ninety-day (90) license suspension and imposition of an ignition interlock system  
23 [and/or blood and urine testing](#) for a period of two (2) to ten (10) years.

24 (7)(i) ~~In any case where a person is convicted of a first offense under the provisions of §~~  
25 ~~31-27-2(d)(1) or under § 31-27-2.1(b)(1), the sentencing judge or magistrate shall, upon request,~~  
26 ~~grant the person a conditional hardship license immediately upon a plea or admission of guilt, or~~  
27 ~~an initial suspension under § 31-27-2.1(b), and after a finding of need under this section;~~  
28 ~~provided, however, that in a case where a conditional hardship license shall be granted by the~~  
29 ~~sentencing judge or magistrate upon an initial suspension under § 31-27-2.1(b) and prior to the~~  
30 ~~installation of an ignition interlock device, said hardship license shall be issued to the motorist~~  
31 ~~upon proof of installation of an ignition interlock device. If a conviction pursuant to §§31-27-~~  
32 ~~2(d)(1) or 31-27-2.1(c)(1) is a first offense, or upon an initial suspension pursuant to §31-27-~~  
33 ~~2.1(b)(ii), where there has been a finding or determination that the motorist was under the~~  
34 ~~influence of intoxicating liquor only, the judge or magistrate shall, upon request, immediately~~

1 grant a conditional hardship license after a finding of need pursuant to this section and upon proof  
2 of the installation of an ignition interlock device.

3 (ii) If a conviction pursuant to §§31-27-2(d)(1) or 31-27-2.1(c)(1) is a first offense, or upon  
4 an initial suspension pursuant to §31-27-2.1(b)(ii), where there has been a finding or  
5 determination that the motorist was under the influence of intoxicating liquor, toluene, controlled  
6 substance or any combination thereof, the judge or magistrate shall, upon request immediately  
7 grant a conditional hardship license after a finding of need pursuant to this section and upon proof  
8 of the installation of an ignition interlock device, subject also the following additional testing:

9 (A) The testing of either blood or urine is being performed by or monitored by a licensed  
10 physician with knowledge and clinical experience in the diagnosis and treatment of drug related  
11 disorders, a licensed or certified psychologist, social worker, or EAP professional with like  
12 knowledge, or a substance abuse counselor certified by the National Association of Alcohol and  
13 Drug Abuse Counselors (all of whom shall be licensed in Rhode Island).

14 (B) The motorist is require to pay for the substance abuse professional, any testing, re-  
15 testing, monitoring and reporting costs of the blood and urine testing.

16 (C) Samples are to be collected, tested and confirmed by a federally certified laboratory  
17 by means of gas chromatography/mass spectrometry or technology recognized as being at least as  
18 scientifically accurate.

19 (D) Samples are to be taken weekly for the first sixty (60) days, thereafter in accordance  
20 with the recommendation of the substance abuse professional. The samples taken thereafter may  
21 be ordered randomly but must be provided by the motorist within twenty-four (24) hours of the  
22 request. The substance abuse professional shall report to the department of the attorney general  
23 within twenty-four (24) hours any failure by the motorist to comply with a request for a sample.

24 (E) A positive test of urine or blood which evidences any controlled substances shall be  
25 reported by the substance abuse professional to the motorists and to the department of the  
26 attorney general within twenty-four (24) hours of receipt of the results. The motorist may, at their  
27 own expense, have an opportunity to have the sample re-tested or re-evaluated by an independent  
28 testing facility which shall provide the result directly to the substance abuse professional. The  
29 attorney general may request, at any time, a copy of any or all test results from the substance  
30 abuse professional, which shall forward the requested results within forty-eight (48) hours.

31 (F) Upon completion of the license suspension, conditional hardship, ignition interlock  
32 and substance abuse testing periods a finalized report shall be presented to the department of  
33 motor vehicles prior to any license reinstatement.

34 (G) If a judge or magistrate determines that a motorist either failed, without good cause,

1 to comply with a sample request or tested positive for any controlled substance, they may  
2 exercise their discretion and revoke the conditional hardship license, extend the time period for  
3 the ignition interlock system and/or substance abuse testing for an additional period of up to  
4 twelve (12) months and/or impose an additional loss of license for up to twenty-four (24) months.

5 (H) A motorist who has failed, without good cause, to comply with a sample request or  
6 tested positive for any controlled substance for a second time within twelve (12) months of the  
7 first failure and/or positive test determination shall be guilty of a misdemeanor punishable by up  
8 to one year imprisonment, or a fine of up to one thousand dollars (\$1,000), or both.

9 (c) However, in any case where a motorist has a prior alcohol-related offense or a prior  
10 reckless driving conviction under § 31-27-4 or reckless eluding conviction under § 31-27-4.1,  
11 within the prior ten (10) years of the offense, or when the instant offense involves a motor vehicle  
12 accident, the judge or magistrate may exercise their discretion in the granting of the hardship  
13 license by imposing up to a ninety (90) day loss of license prior to any imposition of the hardship  
14 license. If the instant matter involves a blood alcohol level of fifteen hundredths (.15) BAC or  
15 above, the judge or magistrate may exercise his or her discretion in the granting of the hardship  
16 license by imposing up to a six (6) month loss of license prior to any imposition of the hardship  
17 license. Said hardship license shall be valid only for twelve (12) hours per day to get to and from  
18 employment, necessary medical appointments, job training, schooling, or any other valid reason  
19 approved in advance by the sentencing judge or magistrate. A hardship license shall only be  
20 granted in conjunction with the installation of an ignition interlock device and/or blood and urine  
21 testing. Any conditional driving privileges must be set by the sentencing judge or magistrate after  
22 a hearing in which the motorist must provide proof of employment status and hours of  
23 employment, or any other legitimate reasons justifying a hardship license. These shall include,  
24 but not be limited to, any unemployment training, schooling, medical appointments, therapy  
25 treatments, or any other valid requests set forth by sworn affidavit. Once said hardship period has  
26 concluded, the motorist must still be subject to the conditions of the ignition interlock system  
27 and/or blood and urine testing as set forth under this section for the period of time as directed by  
28 the court. Any individual who violates the requirements of this subsection shall be subject to the  
29 penalties enumerated in § 31-11-18.1.

30 ~~(e)~~(d) Any person convicted of an offense of driving under the influence of liquor or  
31 drugs resulting in death, § 31-27-2.2; driving under the influence of liquor or drugs resulting in  
32 serious bodily injury, § 31-27-2.6; driving to endanger resulting in death, § 31-27-1; or driving to  
33 endanger resulting in serious bodily injury, § 31-27-1.1; may, in addition to any other penalties  
34 provided by law, be prohibited from operating a motor vehicle that is not equipped with an

1 approved ignition interlock system [and/or blood and urine testing](#) for one to five (5) years.

2 ~~(e)~~(e) Any person who operates a motor vehicle with a suspended license during the  
3 period of suspension, and the reason for the suspension was due to a conviction of driving under  
4 the influence of drugs or alcohol or a sustained violation or conviction of refusal to submit to a  
5 chemical test, shall be subject to the further use of the ignition interlock system [and/or blood and](#)  
6 [urine testing](#) for a period of six (6) months subsequent to the penalties enumerated in § 31-11-  
7 18.1.

8 ~~(f)~~(f) When the court orders the use of an ignition interlock system, the judge or  
9 magistrate shall cause an appropriate notation to be made on the person's record that clearly sets  
10 forth the requirement for, and the period of the use of, the ignition interlock system.

11 ~~(g)~~(g) In addition to the requirements of subsection ~~(f)~~(f), the court or traffic tribunal  
12 shall:

13 (1) Require proof of the installation of the ignition interlock system and periodic  
14 reporting by the person for the purpose of verification of the proper operation of the ignition  
15 interlock system;

16 (2) Require the person to have the ignition interlock system monitored for the proper use  
17 and accuracy by a person, firm, corporation, or other association to be approved by the division of  
18 motor vehicles at least once every six (6) months, or more frequently as the circumstances may  
19 require; and

20 (3) Require the person to pay the reasonable cost of leasing or buying, monitoring, and  
21 maintenance of the ignition interlock system.

22 (4) The requirements under subsection ~~(g)~~(g) shall be the responsibility of the probation  
23 department or justice assistance, if the individual is under their control, or the division of motor  
24 vehicles if the individual is not monitored as a condition of the individual's plea or finding of  
25 guilt.

26 ~~(h)~~(h) If a person is required, in the course of the person's employment, to operate a  
27 motor vehicle owned or provided by the person's employer, the person may operate that motor  
28 vehicle in the course of the person's employment without installation of an ignition interlock  
29 system if the court makes specific findings expressly permitting the person to operate, in the  
30 course of the person's employment, a motor vehicle that is not equipped with an ignition interlock  
31 system.

32 ~~(i)~~(i) Any person subject to an ignition interlock order who violates such order shall be  
33 guilty of a misdemeanor punishable by up to one year imprisonment, or a fine of up to one  
34 thousand dollars (\$1,000), or both. For the purposes of this subsection, a violation of the interlock



1 order, includes, but is not limited to:

2 (1) Altering, tampering, or in any way attempting to circumvent the operation of an  
3 ignition interlock system that has been installed in the motor vehicle of a person under this  
4 section;

5 (2) Operating a motor vehicle that is not equipped with an ignition interlock system; or

6 (3) Soliciting or attempting to have another person start a motor vehicle equipped with an  
7 ignition interlock system for the purpose of providing an operable motor vehicle to a person who  
8 is prohibited from operating a motor vehicle that is not equipped with an ignition interlock  
9 system.

10 ~~(i)~~ Any person who attempts to start, or starts, a motor vehicle equipped with an  
11 ignition interlock system, tampers with, or in any way attempts to circumvent, the operation of an  
12 ignition interlock system that has been installed in the motor vehicle for the purpose of providing  
13 an operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not  
14 equipped with an ignition interlock system, shall be guilty of a misdemeanor punishable by up to  
15 one year imprisonment or a fine of up to one thousand dollars (\$1,000), or both.

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

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LC002004  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO MOTOR AND OTHER VEHICLES – MOTOR VEHICLE OFFENSES

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1           This act would allow for a judge or magistrate to impose the requirements of blood  
2 and/or urine testing for the presence of illicit substances, if necessary, for anyone convicted of  
3 driving under the influence or refusal to submit to a chemical test.

4           This act would take effect upon passage.

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LC002004  
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