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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Senators E O'Neill, Kettle, Maher, P Fogarty, and Pinga

Date Introduced: February 28, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

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

10 (ii) Every person convicted of a second violation within a five (5) year period whose
11 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by weight as
12 shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of
13 a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to
14 mandatory imprisonment of not less than six (6) months nor more than one year, a mandatory fine
15 of not less than one thousand dollars (\$1,000) and a mandatory license suspension for a period of
16 two (2) years from the date of completion of the sentence imposed under this subsection.

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

33 (ii) Every person convicted of a third or subsequent violation within a ~~five (5)~~ twenty-
34 five (25) year period whose blood alcohol concentration is fifteen hundredths of one percent

1 (.15%) above by weight as shown by a chemical analysis of a blood, breath, or urine sample or
2 who is under the influence of a drug, toluene or any controlled substance as defined in
3 subdivision (b)(1) shall be subject to mandatory imprisonment of not less than ~~three (3)~~ five (5)
4 years nor more than ~~five (5)~~ fifteen (15) years, a mandatory fine of not less than one thousand
5 dollars (\$1,000) nor more than five thousand dollars (\$5,000) and a mandatory license suspension
6 for a period of three (3) years from the date of completion of the sentence imposed under this
7 subsection.

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

15 (4) Whoever drives or otherwise operates any vehicle in the state while under the
16 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in
17 chapter 28 of title 21, or any combination of these, when his or her license to operate is
18 suspended, revoked or cancelled for operating under the influence of a narcotic drug or
19 intoxicating liquor shall be guilty of a felony punishable by imprisonment for not more than three
20 (3) years and by a fine or not more than three thousand dollars (\$3,000). The court shall require
21 alcohol and/or drug treatment for the individual; provided, the penalties provided for in
22 subdivision 31-27-2(d)(4) shall not apply to an individual who has surrendered his or her license,
23 and served the court ordered period of suspension, but who, for any reason, has not had their
24 license reinstated after the period of suspension, revocation, or suspension has expired; provided,
25 further the individual shall be subject to the provisions of paragraphs 31-27-2(d)(2)(i) or (ii) or
26 31-27-22(d)(3)(i), (ii), or (iii) regarding subsequent offenses, and any other applicable provision
27 of section 31-27-2.

28 (5) (i) For purposes of determining the period of license suspension, a prior violation
29 shall constitute any charge brought and sustained under the provisions of this section or section
30 31-27-2.1.

31 (ii) Any person over the age of eighteen (18) who is convicted under this section for
32 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of
33 these, while a child under the age of thirteen (13) years was present as a passenger in the motor
34 vehicle when the offense was committed may be sentenced to a term of imprisonment of not more

1 than one year and further shall not be entitled to the benefit of suspension or deferment of this
2 sentence. The sentence imposed under this section may be served in any unit of the adult
3 correctional institutions in the discretion of the sentencing judge.

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

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

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

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

26 (8) Any person convicted of a violation under this section may undergo a clinical
27 assessment at the community college of Rhode Island 's center for workforce and community
28 education. Should this clinical assessment determine problems of alcohol, drug abuse, or
29 psychological problems associated with alcoholic or drug abuse, this person shall be referred to
30 an appropriate facility, licensed or approved by the department of mental health, retardation and
31 hospitals for treatment placement, case management, and monitoring.

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

34 (f) (1) There is established an alcohol and drug safety unit within the division of motor

1 vehicles to administer an alcohol safety action program. The program shall provide for placement
2 and follow-up for persons who are required to pay the highway safety assessment. The alcohol
3 and drug safety action program will be administered in conjunction with alcohol and drug
4 programs licensed by the department of mental health retardation and 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. The course shall take into
8 consideration any language barrier which may exist as to any person ordered to attend, and shall
9 provide for instruction reasonably calculated to communicate the purposes of the course in
10 accordance with the requirements of the subsection. Any costs reasonably incurred in connection
11 with the provision of this accommodation shall be borne by the person being retrained. A copy of
12 any violation under this section shall be forwarded by the court to the alcohol and drug safety
13 unit. In the event that persons convicted under the provisions of this chapter fail to attend and
14 complete the above course or treatment program, as ordered by the judge, then the person may be
15 brought before the court, and after a hearing as to why the order of the court was not followed,
16 may be sentenced to jail for a period not exceeding one year.

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

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

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

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

34 (j) An order to attend a special course on driving while intoxicated that shall be

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

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

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

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

24 (b) If a person for religious or medical reasons cannot be subjected to blood tests, the
25 person may file an affidavit with the division of motor vehicles stating the reasons why he or she
26 cannot be required to take blood tests, and a notation to this effect shall be made on his or her
27 license. If that person is asked to submit to chemical tests as provided under this chapter, the
28 person shall only be required to submit to chemical tests of his or her breath or urine. When a
29 person is requested to submit to blood tests, only a physician or registered nurse or a medical
30 technician certified under regulations promulgated by the director of the department of health
31 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation
32 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to
33 have a physician of his or her own choosing and at his or her own expense administer chemical
34 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction

1 of a law enforcement officer. If a person having been placed under arrest refuses upon the request
2 of a law enforcement officer to submit to the tests, as provided in section 31-27-2, none shall be
3 given, but a judge of the traffic tribunal or district court judge, upon receipt of a report of a law
4 enforcement officer: that he or she had reasonable grounds to believe the arrested person had
5 been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene,
6 or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; that
7 the person had been informed of his or her rights in accordance with section 31-27-3; that the
8 person had been informed of the penalties incurred as a result of noncompliance with this section;
9 and that the person had refused to submit to the tests upon the request of a law enforcement
10 officer; shall promptly order that the person's operator's license or privilege to operate a motor
11 vehicle in this state be immediately suspended and that the person's license be surrendered within
12 five (5) days of notice of suspension. A traffic tribunal judge or a district court judge pursuant to
13 the terms of subsection (c) of this section shall 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 shall require attendance at a
18 special course on driving while intoxicated or under the influence of a controlled substance and/or
19 alcohol or drug treatment for the individual.

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

26 (3) Every person convicted for a third or subsequent violation within a ~~five (5)~~ twenty-
27 five (25) year period shall be guilty of a misdemeanor and shall be imprisoned for not more than
28 one year, fined eight hundred dollars (\$800) to one thousand dollars (\$1,000), order the person to
29 perform not less than one hundred (100) hours of public community restitution, and the person's
30 operator's license in this state shall be suspended for a period of two (2) years to five (5) years.
31 The judge shall require alcohol or drug treatment for the individual. Provided, that prior to the
32 reinstatement of a license to a person charged with a third or subsequent violation within a three
33 (3) year period, a hearing shall be held before a judge. At the hearing the judge shall review the
34 person's driving record, his or her employment history, family background, and any other

1 pertinent factors that would indicate that the person has demonstrated behavior which warrants
2 the reinstatement of his or her license.

3 (4) For purposes of determining the period of license suspension, a prior violation shall
4 constitute any charge brought and sustained under the provisions of this section or section 31-27-
5 2.

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

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

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

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

33 (d) For the purposes of this section, any test of a sample of blood, breath, or urine for the
34 presence of alcohol which relies in whole or in part upon the principle of infrared light absorption

1 is considered a chemical test.

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

6 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 increase the penalties for driving under the influence of liquor or drugs
- 2 and refusal to submit to a chemical test.
- 3 This act would take effect upon passage.

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