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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Representatives Gallison, Amore, Johnston, Solomon, and Hull

Date Introduced: March 19, 2015

Referred To: House Judiciary

(Transportation)

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. [Effective January 1, 2015.] --**

4           (a) Whoever drives or otherwise operates any vehicle in the state while under the influence of any  
5 intoxicating liquor, drugs, toluene, or any controlled substance as defined in chapter 28 of title 21,  
6 or any combination of these, shall be guilty of a misdemeanor except as provided in subdivision  
7 (d)(3) 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 that 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  
7 be admissible and competent, provided that evidence is presented that the following conditions  
8 have 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  
26 the opportunity to have an additional chemical test. The officer arresting or so charging the  
27 person shall have informed the person of this right and afforded him or her a reasonable  
28 opportunity to exercise this right, and a notation to this effect is made in the official records of the  
29 case in the police department. Refusal to permit an additional chemical test shall render  
30 incompetent and 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 or magistrate and/or  
5 shall be required to attend a special course on driving while intoxicated or under the influence of  
6 a controlled substance; provided, however, that the court may permit a servicemember or veteran  
7 to complete any court-approved counseling program administered or approved by the Veterans'  
8 Administration, and his or her driver's license shall be suspended for thirty (30) days up to one  
9 hundred eighty (180) days. The sentencing judge or magistrate ~~may~~ shall prohibit that person  
10 from operating a motor vehicle that is not equipped with an ignition interlock system as provided  
11 in § 31-27-2.8 and shall not grant an exception to operate motor vehicles to offenders for the  
12 purpose of traveling to and from their employment, or use therein.

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

29 (iii) Every person convicted of a first offense whose blood alcohol concentration is  
30 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,  
31 toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to a fine of  
32 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of  
33 public community restitution and/or shall be imprisoned for up to one year. The sentence may be  
34 served in any unit of the adult correctional institutions in the discretion of the sentencing judge or

1 [magistrate](#). The person's driving license shall be suspended for a period of three (3) months to  
2 eighteen (18) months. The sentencing judge [or magistrate](#) shall require attendance at a special  
3 course on driving while intoxicated or under the influence of a controlled substance and/or  
4 alcohol or drug treatment for the individual; provided, however, that the court may permit a  
5 servicemember or veteran to complete any court-approved counseling program administered or  
6 approved by the Veterans' Administration. The sentencing judge or magistrate shall prohibit that  
7 person from operating a motor vehicle that is not equipped with an ignition interlock system as  
8 provided in § 31-27-2.8 [and shall not grant an exception to operate motor vehicles to offenders](#)  
9 [for the purpose of traveling to and from their employment, or use therein](#).

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

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

1 subsection. The sentencing judge [or magistrate](#) shall require alcohol or drug treatment for the  
2 individual; provided, however, that the court may permit a servicemember or veteran to complete  
3 any court approved counseling program administered or approved by the Veterans'  
4 Administration. The sentencing judge or magistrate shall prohibit that person from operating a  
5 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8  
6 [and shall not grant an exception to operate motor vehicles to offenders for the purpose of](#)  
7 [traveling to and from their employment, or use therein.](#)

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 [or magistrate](#); however,  
19 not less than forty-eight (48) hours of imprisonment shall be served consecutively. The  
20 sentencing judge [or magistrate](#) shall require alcohol or drug treatment for the individual;  
21 provided, however, that the court may permit a servicemember or veteran to complete any court-  
22 approved counseling program administered or approved by the Veterans' Administration, and  
23 shall prohibit that person from operating a motor vehicle that is not equipped with an ignition  
24 interlock system as provided in § 31-27-2.8 [and shall not grant an exception to operate motor](#)  
25 [vehicles to offenders for the purpose of traveling to and from their employment, or use therein.](#)

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

1 prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock  
2 system as provided in § 31-27-2.8 [and shall not grant an exception to operate motor vehicles to](#)  
3 [offenders for the purpose of traveling to and from their employment, or use therein.](#)

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

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

23 (5) (i) For purposes of determining the period of license suspension, a prior violation  
24 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-  
25 2.1.

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

33 (6) (i) Any person convicted of a violation under this section shall pay a highway  
34 assessment fine of five hundred dollars (\$500) that shall be deposited into the general fund. The

1 assessment provided for by this subsection shall be collected from a violator before any other  
2 fines authorized by this section.

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

5 (7) (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 or magistrate shall also require attendance at a special course on driving while intoxicated  
10 or under the influence of a controlled substance and alcohol or drug education and/or treatment  
11 for the juvenile. The juvenile ~~may~~ shall also be required to pay a highway assessment fine of no  
12 more than five hundred dollars (\$500) and the assessment imposed shall be deposited into the  
13 general fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **31-27-2.1. Refusal to submit to chemical test. [Effective January 1, 2015.]** -- (a) Any  
21 person who operates a motor vehicle within this state shall be deemed to have given his or her  
22 consent to chemical tests of his or her breath, blood, and/or urine for the purpose of determining  
23 the chemical content of his or her body fluids or breath. No more than two (2) complete tests, one  
24 for the presence of intoxicating liquor and one for the presence of toluene or any controlled  
25 substance, as defined in § 21-28-1.02(7), shall be administered at the direction of a law  
26 enforcement officer having reasonable grounds to believe the person to have been driving a motor  
27 vehicle within this state while under the influence of intoxicating liquor, toluene, or any  
28 controlled substance, as defined in chapter 28 of title 21, or any combination of these. The  
29 director of the department of health is empowered to make and file, with the secretary of state,  
30 regulations that prescribe the techniques and methods of chemical analysis of the person's body  
31 fluids or breath and the qualifications and certification of individuals authorized to administer the  
32 testing and analysis.

33 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the  
34 person may file an affidavit with the division of motor vehicles stating the reasons why he or she

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

24 (1) Impose, for the first violation, a fine in the amount of two hundred dollars (\$200) to  
25 five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of  
26 public community restitution. The person's driving license in this state shall be suspended for a  
27 period of six (6) months to one year. The traffic tribunal/[district court](#) judge or magistrate shall  
28 require attendance at a special course on driving while intoxicated or under the influence of a  
29 controlled substance and/or alcohol or drug treatment for the individual. The traffic  
30 tribunal/[district court](#) judge or magistrate ~~may~~ [shall](#) prohibit that person from operating a motor  
31 vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8 [and shall](#)  
32 [not grant an exception to operate motor vehicles to offenders for the purpose of traveling to and](#)  
33 [from their employment, or use therein.](#)

34 (2) Every person convicted for a second violation within a five-year (5) period shall be

1 guilty of a misdemeanor; shall be imprisoned for not more than six (6) months; and shall pay a  
2 fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the  
3 person to perform sixty (60) to one hundred (100) hours of public community restitution; and the  
4 person's driving license in this state shall be suspended for a period of one year to two (2) years.  
5 The [traffic tribunal/district court](#) judge or magistrate shall require alcohol and/or drug treatment  
6 for the individual. The sentencing judge or magistrate shall prohibit that person from operating a  
7 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8  
8 [and shall not grant an exception to operate motor vehicles to offenders for the purpose of](#)  
9 [traveling to and from their employment, or use therein.](#)

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

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

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

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

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

1 restitution provided for under this section; can be suspended.

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

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

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

25 **31-27-2.8. Ignition interlock system imposed as part of sentence -- Requirements.**

26 **[Effective January 1, 2015.] --** (a) Any person convicted under the provisions of § 31-27-2(d)1,  
27 2 or 3 (1)(i) or (ii), or whose violation is sustained under the provisions of § 31-27-2.1(b)(1), ~~may~~  
28 shall be prohibited by the sentencing judge or magistrate from operating a motor vehicle that is  
29 not equipped with an ignition interlock system.

30 (b) Notwithstanding any other provisions contained in this chapter, after a finding of  
31 eligibility, any mandatory period of license suspension may be reduced by the imposition of an  
32 ignition interlock system ordered by the court or traffic tribunal as follows:

33 (1) For a violation of § 31-27-2(d)(1), a person shall be subject to a minimum thirty-day  
34 (30) license suspension and an imposition of an ignition interlock system for three (3) months to

1 one year.

2 (2) For a violation of § 31-27-2.1(b)(1), a person shall be subject to a minimum thirty-  
3 day (30) license suspension and an imposition of an ignition interlock system for a period of six  
4 (6) months to two (2) years.

5 (3) For a violation of § 31-27-2(d)(2), a person shall be subject to a minimum forty-five-  
6 day (45) license suspension and an imposition of an ignition interlock system for a period of six  
7 (6) months to two (2) years.

8 (4) For a violation of § 31-27-2.1(b)(2), a person shall be subject to a minimum sixty-day  
9 (60) license suspension and an imposition of an ignition interlock system for a period of one to  
10 four (4) years.

11 (5) For a violation of § 31-27-2(d)(3), a person shall be subject to a minimum sixty-day  
12 (60) license suspension and imposition of an ignition interlock system for a period of one to four  
13 (4) years.

14 (6) For a violation of § 31-27-2.1(b)(3), a person shall be subject to a minimum ninety-  
15 day (90) license suspension and imposition of an ignition interlock system for a period of two (2)  
16 to ten (10) years.

17 ~~(7) In any case where a person is convicted of a first offense under the provisions of §~~  
18 ~~31-27-2(d)(1), or a second offense under the provisions of § 31-27-2(d)(2), or under § 31-27-~~  
19 ~~2.1(b)(1), the sentencing judge or magistrate may grant the person a conditional hardship license~~  
20 ~~during the period of license suspension. Said hardship license shall be valid only for twelve (12)~~  
21 ~~hours per day to get to and from employment. A hardship license shall only be granted in~~  
22 ~~conjunction with the installation of an ignition interlock device. Any conditional driving~~  
23 ~~privileges must be set by the sentencing judge or magistrate after a hearing in which the motorist~~  
24 ~~must provide proof of employment status and hours of employment. Any individual who violates~~  
25 ~~the requirements of this subsection shall be subject to the penalties enumerated in § 31-27-18.1.~~

26 (c) Any person convicted of an offense of driving under the influence of liquor or drugs  
27 resulting in death, § 31-27-2.2; driving under the influence of liquor or drugs resulting in serious  
28 bodily injury, § 31-27-2.6; driving to endanger resulting in death, § 31-27-1; or driving to  
29 endanger resulting in serious bodily injury, § 31-27-1.1; ~~may~~ shall, in addition to any other  
30 penalties provided by law, be prohibited from operating a motor vehicle that is not equipped with  
31 an approved ignition interlock system for one to five (5) years.

32 (d) Any person who operates a motor vehicle with a suspended license and the reason for  
33 the suspension was due to a conviction of driving under the influence of drugs or alcohol or a  
34 sustained violation or conviction of refusal to submit to a chemical test, shall be subject to the

1 imposition of an ignition interlock system for six (6) months to be ordered by the court or the  
2 traffic tribunal.

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

6 (f) In addition to the requirements of subsection (e) of this section, the court or traffic  
7 tribunal shall:

8 (1) Require proof of the installation of the ignition interlock system and periodic  
9 reporting by the person for the purpose of verification of the proper operation of the ignition  
10 interlock system;

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

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

17 (g) If a person is required, in the course of the person's employment, to operate a motor  
18 vehicle owned or provided by the person's employer, the person may operate that motor vehicle  
19 in the course of the person's employment without installation of an ignition interlock system if the  
20 court makes specific findings expressly permitting the person to operate, in the course of the  
21 person's employment, a motor vehicle that is not equipped with an ignition interlock system.

22 (h) Any person subject to an ignition interlock order who violates such order shall be  
23 guilty of a misdemeanor punishable by up to one year imprisonment, or a fine of up to one  
24 thousand dollars (\$1,000), or both. For the purposes of this subsection, a violation of the interlock  
25 order, includes, but is not limited to:

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

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

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

34 (i) Any person who attempts to start, or starts, a motor vehicle equipped with an ignition

1 interlock system, tampers with, or in any way attempts to circumvent, the operation of an ignition  
2 interlock system that has been installed in the motor vehicle for the purpose of providing an  
3 operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not  
4 equipped with an ignition interlock system, shall be guilty of a misdemeanor punishable by up to  
5 one year imprisonment or a fine of up to one thousand dollars (\$1,000), or both.

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

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LC001779  
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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 authorize magistrates, in addition to judges, to prohibit drivers convicted  
2 of drunk driving or refusal to submit to a chemical test from operating a motor vehicle unless it is  
3 equipped with an ignition interlock system and mandate that all license suspensions be followed  
4 with that requirement with no employment exception.

5           This act would take effect upon passage.

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