

2017 -- H 5520 SUBSTITUTE A

LC001224/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Representatives McEntee, and Craven

Date Introduced: February 15, 2017

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

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

3 **31-27-2.1. Refusal to submit to chemical test.**

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

16 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the
17 person may file an affidavit with the division of motor vehicles stating the reasons why he or she
18 cannot be required to take blood tests and a notation to this effect shall be made on his or her
19 license. If that person is asked to submit to chemical tests as provided under this chapter, the

1 person shall only be required to submit to chemical tests of his or her breath or urine. When a
2 person is requested to submit to blood tests, only a physician or registered nurse, or a medical
3 technician certified under regulations promulgated by the director of the department of health,
4 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation
5 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to
6 have a physician of his or her own choosing, and at his or her own expense, administer chemical
7 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction
8 of a law enforcement officer. If a person, having been placed under arrest, refuses upon the
9 request of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be
10 given, but a judge or magistrate of the traffic tribunal or district court judge or magistrate, upon
11 receipt of a report of a law enforcement officer: that he or she had reasonable grounds to believe
12 the arrested person had been driving a motor vehicle within this state under the influence of
13 intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or
14 any combination of these; that the person had been informed of his or her rights in accordance
15 with § 31-27-3; that the person had been informed of the penalties incurred as a result of
16 noncompliance with this section; and that the person had refused to submit to the tests upon the
17 request of a law enforcement officer; shall promptly order that the person's operator's license or
18 privilege to operate a motor vehicle in this state be immediately suspended, however, said
19 suspension shall be subject to the hardship provisions enumerated in § 31-27-2.8. A traffic
20 tribunal judge or magistrate, or a district court judge or magistrate, pursuant to the terms of
21 subsection (c), shall order as follows:

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

30 (2) Every person convicted for a second violation within a five-year (5) period, except
31 with respect to cases of refusal to submit to a blood test, shall be guilty of a misdemeanor; shall
32 be imprisoned for not more than six (6) months; and shall pay a fine in the amount of six hundred
33 dollars (\$600) to one thousand dollars (\$1,000), order the person to perform sixty (60) to one
34 hundred (100) hours of public community restitution; and the person's driving license in this state

1 shall be suspended for a period of one year to two (2) years. The judge or magistrate shall require
2 alcohol and/or drug treatment for the individual. The sentencing judge or magistrate shall prohibit
3 that person from operating a motor vehicle that is not equipped with an ignition interlock system
4 as provided in § 31-27-2.8.

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

19 (4) For a second violation within a five-year (5) period with respect to a case of a refusal
20 to submit to a blood test, a fine in the amount of six hundred dollars (\$600) to one thousand
21 dollars (\$1,000), the person shall perform sixty (60) to one hundred (100) hours of public
22 community restitution; and the person's driving license in this state shall be suspended for a
23 period of two (2) years. The judicial officer shall require alcohol and/or drug treatment for the
24 individual. The sentencing judicial officer shall prohibit that person from operating a motor
25 vehicle that is not equipped with an ignition interlock system as provided in §31-27-2.8. Such a
26 violation with respect to refusal to submit to a chemical blood test shall be a civil offense.

27 (5) For a third or subsequent violation within a five-year (5) period with respect to a case
28 of a refusal to submit to a blood test, a fine in the amount of eight hundred dollars (\$800) to one
29 thousand dollars (\$1,000), the person shall perform not less than one hundred (100) hours of
30 public community restitution; and the person's driving license in this state shall be suspended for
31 a period of two (2) to five (5) years. The sentencing judicial officer shall prohibit that person from
32 operating a motor vehicle that is not equipped with an ignition interlock system as provided in
33 §31-27-2.8. The judicial officer shall require alcohol and/or drug treatment for the individual.
34 Such a violation with respect to refusal to submit to a chemical test of blood shall be a civil

1 offense. Provided, that prior to the reinstatement of a license to a person charged with a third or
2 subsequent violation within a three-year (3) period, a hearing shall be held before a judicial
3 officer. At the hearing, the judicial officer shall review the person's driving record, their
4 employment history, family background, and any other pertinent factors that would indicate that
5 the person has demonstrated behavior that warrants the reinstatement of their license.

6 ~~(4)~~(6) For purposes of determining the period of license suspension, a prior violation
7 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-
8 2.

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

13 ~~(6)~~(8) In addition to any other fines and highway safety assessments, a two hundred
14 dollar (\$200) assessment shall be paid by any person found in violation of this section to support
15 the department of health's chemical testing programs outlined in § 31-27-2(4), that shall be
16 deposited as general revenues, not restricted receipts.

17 ~~(7)~~(9) No fines, suspensions, assessments, alcohol or drug treatment programs, course on
18 driving while intoxicated or under the influence of a controlled substance, or public community
19 restitution provided for under this section can be suspended.

20 (c) Upon suspending or refusing to issue a license or permit as provided in subsection (a),
21 the traffic tribunal or district court shall immediately notify the person involved in writing, and
22 upon his or her request, within fifteen (15) days, shall afford the person an opportunity for a
23 hearing as early as practical upon receipt of a request in writing. Upon a hearing, the judge may
24 administer oaths and may issue subpoenas for the attendance of witnesses and the production of
25 relevant books and papers. If the judge finds after the hearing that:

26 (1) The law enforcement officer making the sworn report had reasonable grounds to
27 believe that the arrested person had been driving a motor vehicle within this state while under the
28 influence of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of
29 title 21, or any combination of these;

30 (2) The person, while under arrest, refused to submit to the tests upon the request of a law
31 enforcement officer;

32 (3) The person had been informed of his or her rights in accordance with § 31-27-3; and

33 (4) The person had been informed of the penalties incurred as a result of noncompliance
34 with this section, the judge shall sustain the violation. The judge shall then impose the penalties

1 set forth in subsection (b). Action by the judge must be taken within seven (7) days after the
2 hearing or it shall be presumed that the judge has refused to issue his or her order of suspension.

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

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

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

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

1 This act would decriminalize second, third and subsequent violations of §31-27-2.1
2 ("refusal to submit to chemical test") in cases of refusal to submit to a blood test in light of
3 Birchfield v. North Dakota but would also set forth new civil penalties for second, third and
4 subsequent violations. This act would reinstate non-criminal penalties for subsequent refusals to
5 submit to a blood test.

6 This act would take effect upon passage.

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