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LC003703

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Representatives Nardolillo, Craven, Costantino, Azzinaro, and Canario

Date Introduced: January 18, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

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

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

17 (2) Whoever drives, or otherwise operates, any vehicle in the state with a blood presence  
18 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by  
19 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as

1 provided in subsection (d).

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

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

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

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

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

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

22 (6) The person arrested and charged with operating a motor vehicle while under the  
23 influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of  
24 title 21, or, any combination of these in violation of subsection (a), was afforded the opportunity  
25 to have an additional chemical test. The officer arresting or so charging the person shall have  
26 informed the person of this right and afforded him or her a reasonable opportunity to exercise this  
27 right, and a notation to this effect is made in the official records of the case in the police  
28 department. Refusal to permit an additional chemical test shall render incompetent and  
29 inadmissible in evidence the original report.

30 (d) (1) (i) Every person found to have violated subdivision (b)(1) shall be sentenced as  
31 follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one  
32 percent (.08%), but less than one-tenth of one percent (.1%), by weight, or who has a blood  
33 presence of any scheduled controlled substance as defined in subdivision (b)(2), shall be subject  
34 to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300);

1 shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or  
2 shall be imprisoned for up to one year. The sentence may be served in any unit of the adult  
3 correctional institutions in the discretion of the sentencing judge and/or shall be required to attend  
4 a special course on driving while intoxicated or under the influence of a controlled substance;  
5 provided, however, that the court may permit a servicemember or veteran to complete any court-  
6 approved counseling program administered or approved by the Veterans' Administration, and his  
7 or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.  
8 The sentencing judge or magistrate may prohibit that person from operating a motor vehicle that  
9 is not equipped with an ignition interlock system as provided in § 31-27-2.8.

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

24 (iii) Every person convicted of a first offense whose blood alcohol concentration is  
25 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,  
26 toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to a fine of  
27 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of  
28 public community restitution and/or shall be imprisoned for up to one year. The sentence may be  
29 served in any unit of the adult correctional institutions in the discretion of the sentencing judge.  
30 The person's driving license shall be suspended for a period of three (3) months to eighteen (18)  
31 months. The sentencing judge shall require attendance at a special course on driving while  
32 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for  
33 the individual; provided, however, that the court may permit a servicemember or veteran to  
34 complete any court-approved counseling program administered or approved by the Veterans'

1 Administration. The sentencing judge or magistrate shall prohibit that person from operating a  
2 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

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

20 (ii) Every person convicted of a second violation within a five-year (5) period whose  
21 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above, by weight as  
22 shown by a chemical analysis of a blood, breath, or urine sample, or who is under the influence of  
23 a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to  
24 mandatory imprisonment of not less than six (6) months, nor more than one year; a mandatory  
25 fine of not less than one thousand dollars (\$1,000); and a mandatory license suspension for a  
26 period of two (2) years from the date of completion of the sentence imposed under this  
27 subsection. The sentencing judge shall require alcohol or drug treatment for the individual;  
28 provided, however, that the court may permit a servicemember or veteran to complete any court  
29 approved counseling program administered or approved by the Veterans' Administration. The  
30 sentencing judge or magistrate shall prohibit that person from operating a motor vehicle that is  
31 not equipped with an ignition interlock system as provided in § 31-27-2.8

32 (3) (i) Every person convicted of a third or subsequent violation within a five-year (5)  
33 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or  
34 above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol

1 concentration is unknown or who has a blood presence of any scheduled controlled substance as  
2 defined in subdivision (b)(2), regardless of whether any prior violation and subsequent conviction  
3 was a violation and subsequent conviction under this statute or under the driving under the  
4 influence of liquor or drugs statute of any other state, shall be guilty of a felony and be subject to  
5 a mandatory fine of four hundred (\$400) dollars. The person's driving license shall be suspended  
6 for a period of two (2) years to three (3) years, and the individual shall be sentenced to not less  
7 than one year and not more than three (3) years in jail. The sentence may be served in any unit of  
8 the adult correctional institutions in the discretion of the sentencing judge; however, not less than  
9 forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall  
10 require alcohol or drug treatment for the individual; provided, however, that the court may permit  
11 a servicemember or veteran to complete any court-approved counseling program administered or  
12 approved by the Veterans' Administration, and shall prohibit that person from operating a motor  
13 vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

14 (ii) Every person convicted of a third or subsequent violation within a five-year (5) period  
15 whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by weight  
16 as shown by a chemical analysis of a blood, breath, or urine sample, or who is under the influence  
17 of a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall be subject to  
18 mandatory imprisonment of not less than three (3) years, nor more than five (5) years; a  
19 mandatory fine of not less than one thousand dollars (\$1,000), nor more than five thousand  
20 dollars (\$5,000); and a mandatory license suspension for a period of three (3) years from the date  
21 of completion of the sentence imposed under this subsection. The sentencing judge shall require  
22 alcohol or drug treatment for the individual. The sentencing judge or magistrate shall prohibit that  
23 person from operating a motor vehicle that is not equipped with an ignition interlock system as  
24 provided in § 31-27-2.8.

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

32 (4) Whoever drives or otherwise operates any vehicle in the state while under the  
33 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in  
34 chapter 28 of title 21, or any combination of these, when his or her license to operate is

1 suspended, revoked, or cancelled for operating under the influence of a narcotic drug or  
2 intoxicating liquor, shall be guilty of a felony punishable by imprisonment for not more than three  
3 (3) years and by a fine of not more than three thousand dollars (\$3,000). The court shall require  
4 alcohol and/or drug treatment for the individual; provided, the penalties provided for in § 31-27-  
5 2(d)(4) shall not apply to an individual who has surrendered his or her license and served the  
6 court-ordered period of suspension, but who, for any reason, has not had his or her license  
7 reinstated after the period of suspension, revocation, or suspension has expired; provided, further,  
8 the individual shall be subject to the provisions of subdivision (d)(2)(i), (d)(2)(ii), (d)(3)(i),  
9 (d)(3)(ii), or (d)(3)(iii) regarding subsequent offenses, and any other applicable provision of this  
10 section.

11 (5) (i) For purposes of determining the period of license suspension, a prior violation  
12 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-  
13 2.1.

14 (ii) Any person over the age of eighteen (18) who is convicted under this section for  
15 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of  
16 these, while a child under the age of thirteen (13) years was present as a passenger in the motor  
17 vehicle when the offense was committed, ~~may be sentenced to a term of imprisonment of not~~  
18 ~~more than one year, and further, shall not be entitled to the benefit of suspension or deferment of~~  
19 ~~this sentence. The sentence imposed under this section may be served in any unit of the adult~~  
20 ~~correctional institutions in the discretion of the sentencing judge~~ shall be subject to immediate  
21 license suspension pending prosecution. Any person convicted of violating this section shall be  
22 guilty of a felony offense with imprisonment of up to five (5) years and a fine not to exceed five  
23 thousand dollars (\$5,000). The sentencing judge shall also order a license suspension of up to two  
24 (2) years, require attendance at a special course on driving while intoxicated or under the  
25 influence of a controlled substance and alcohol or drug education and/or treatment. The  
26 individual may also be required to pay a highway assessment fine of no more than five hundred  
27 dollars (\$500) and the assessment imposed shall be deposited into the general fund.

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

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

34 (7) (i) If the person convicted of violating this section is under the age of eighteen (18)

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

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

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

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

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

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

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

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

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

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

32           (j) An order to attend a special course on driving while intoxicated that shall be  
33 administered in cooperation with a college or university accredited by the state, shall include a  
34 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars



1 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into  
2 the general fund.

3 (k) 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 is  
5 considered a chemical test.

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

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

15 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

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1           This act would increase the fines and penalties of operating under the influence of alcohol  
2 or a controlled substance with a child under thirteen (13) years of age by making it a felony  
3 offense and increasing the penalties up to five (5) years imprisonment and a fine not to exceed  
4 \$5,000.

5           This act would take effect upon passage.

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