

2018 -- S 2561

=====
LC003821
=====

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: Senators Raptakis, Cote, Sosnowski, and Sheehan

Date Introduced: March 01, 2018

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.**

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

20 (ii) Every person convicted of a second violation within a ~~five-year (5)~~ ten-year (10)
21 period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) or above,
22 by weight as shown by a chemical analysis of a blood, breath, or urine sample, or who is under
23 the influence of a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall
24 be subject to mandatory imprisonment of not less than six (6) months, nor more than one year; a
25 mandatory fine of not less than one thousand dollars (\$1,000); and a mandatory license
26 suspension for a period of two (2) years from the date of completion of the sentence imposed
27 under this subsection. The sentencing judge shall require alcohol or drug treatment for the
28 individual; provided, however, that the court may permit a servicemember or veteran to complete
29 any court approved counseling program administered or approved by the Veterans'
30 Administration. The sentencing judge or magistrate shall prohibit that person from operating a
31 motor vehicle that is 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 ten-year (10) period with a blood alcohol concentration of eight one-hundredths of one percent
34 (.08%) or 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)~~ ten-
15 year (10) period whose blood alcohol concentration is fifteen hundredths of one percent (.15%)
16 above by weight as shown by a chemical analysis of a blood, breath, or urine sample, or who is
17 under the influence of a drug, toluene, or any controlled substance as defined in subdivision
18 (b)(1), shall be subject to mandatory imprisonment of not less than three (3) years, nor more than
19 five (5) years; a mandatory fine of not less than one thousand dollars (\$1,000), nor more than five
20 thousand dollars (\$5,000); and a mandatory license suspension for a period of three (3) years
21 from the date of completion of the sentence imposed under this subsection. The sentencing judge
22 shall require alcohol or drug treatment for the individual. The sentencing judge or magistrate shall
23 prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock
24 system as 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)~~ ten-year (10) period, regardless of whether any prior
27 violation and subsequent conviction was a violation and subsequent conviction under this statute
28 or under the driving under the influence of liquor or drugs statute of any other state, shall be
29 subject, in the discretion of the sentencing judge, to having the vehicle owned and operated by the
30 violator seized and sold by the state of Rhode Island, with all funds obtained by the sale to be
31 transferred 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.

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

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

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

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

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

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

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

28 (2) Persons convicted under the provisions of this chapter shall be required to attend a
29 special course on driving while intoxicated or under the influence of a controlled substance,
30 and/or participate in an alcohol or drug treatment program; provided, however, that the court may
31 permit a servicemember or veteran to complete any court-approved counseling program
32 administered or approved by the Veterans' Administration. The course shall take into
33 consideration any language barrier that may exist as to any person ordered to attend, and shall
34 provide for instruction reasonably calculated to communicate the purposes of the course in

1 accordance with the requirements of the subsection. Any costs reasonably incurred in connection
2 with the provision of this accommodation shall be borne by the person being retrained. A copy of
3 any violation under this section shall be forwarded by the court to the alcohol and drug safety
4 unit. In the event that persons convicted under the provisions of this chapter fail to attend and
5 complete the above course or treatment program, as ordered by the judge, then the person may be
6 brought before the court, and after a hearing as to why the order of the court was not followed,
7 may be sentenced to jail for a period not exceeding one year.

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

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

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

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

25 (j) An order to attend a special course on driving while intoxicated that shall be
26 administered in cooperation with a college or university accredited by the state, shall include a
27 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
28 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
29 the general fund.

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

33 (l) If any provision of this section, or the application of any provision, shall for any
34 reason be judged invalid, such a judgment shall not affect, impair, or invalidate the remainder of

1 the section, but shall be confined in this effect to the provision or application directly involved in
2 the controversy giving rise to the judgment.

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

8 **31-27-2.1. Refusal to submit to chemical test.**

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

21 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the
22 person may file an affidavit with the division of motor vehicles stating the reasons why he or she
23 cannot be required to take blood tests and a notation to this effect shall be made on his or her
24 license. If that person is asked to submit to chemical tests as provided under this chapter, the
25 person shall only be required to submit to chemical tests of his or her breath or urine. When a
26 person is requested to submit to blood tests, only a physician or registered nurse, or a medical
27 technician certified under regulations promulgated by the director of the department of health,
28 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation
29 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to
30 have a physician of his or her own choosing, and at his or her own expense, administer chemical
31 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction
32 of a law enforcement officer. If a person, having been placed under arrest, refuses upon the
33 request of a law enforcement officer to submit to the tests, as provided in § 31-27-2, none shall be
34 given, but a judge or magistrate of the traffic tribunal or district court judge or magistrate, upon

1 receipt of a report of a law enforcement officer: that he or she had reasonable grounds to believe
2 the arrested person had been driving a motor vehicle within this state under the influence of
3 intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or
4 any combination of these; that the person had been informed of his or her rights in accordance
5 with § 31-27-3; that the person had been informed of the penalties incurred as a result of
6 noncompliance with this section; and that the person had refused to submit to the tests upon the
7 request of a law enforcement officer; shall promptly order that the person's operator's license or
8 privilege to operate a motor vehicle in this state be immediately suspended, however, said
9 suspension shall be subject to the hardship provisions enumerated in § 31-27-2.8. A traffic
10 tribunal judge or magistrate, or a district court judge or magistrate, pursuant to the terms of
11 subsection (c), shall order as follows:

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

20 (2) Every person convicted for a second violation within a ~~five-year (5)~~ ten-year (10)
21 period, except with respect to cases of refusal to submit to a blood test, shall be guilty of a
22 misdemeanor; shall be imprisoned for not more than six (6) months; and shall pay a fine in the
23 amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the person to
24 perform sixty (60) to one hundred (100) hours of public community restitution; and the person's
25 driving license in this state shall be suspended for a period of one year to two (2) years. The judge
26 or magistrate shall require alcohol and/or drug treatment for the individual. The sentencing judge
27 or magistrate shall prohibit that person from operating a motor vehicle that is not equipped with
28 an ignition interlock system as provided in § 31-27-2.8.

29 (3) Every person convicted for a third or subsequent violation within a ~~five-year (5)~~ ten-
30 year (10) period, except with respect to cases of refusal to submit to a blood test, shall be guilty of
31 a misdemeanor; and shall be imprisoned for not more than one year; fined eight hundred dollars
32 (\$800) to one thousand dollars (\$1,000); shall perform not less than one hundred (100) hours of
33 public community restitution; and the person's operator's license in this state shall be suspended
34 for a period of two (2) years to five (5) years. The sentencing judge or magistrate shall prohibit

1 that person from operating a motor vehicle that is not equipped with an ignition interlock system
2 as provided in § 31-27-2.8. The judge or magistrate shall require alcohol or drug treatment for
3 the individual. Provided, that prior to the reinstatement of a license to a person charged with a
4 third or subsequent violation within a three-year (3) period, a hearing shall be held before a judge
5 or magistrate. At the hearing, the judge or magistrate shall review the person's driving record, his
6 or her employment history, family background, and any other pertinent factors that would
7 indicate that the person has demonstrated behavior that warrants the reinstatement of his or her
8 license.

9 (4) For a second violation within a ~~five-year (5)~~ ten-year (10) period with respect to a
10 case of a refusal to submit to a blood test, a fine in the amount of six hundred dollars (\$600) to
11 one thousand dollars (\$1,000); the person shall perform sixty (60) to one hundred (100) hours of
12 public community restitution; and the person's driving license in this state shall be suspended for
13 a period of two (2) years. The judicial officer shall require alcohol and/or drug treatment for the
14 individual. The sentencing judicial officer shall prohibit that person from operating a motor
15 vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8. Such a
16 violation with respect to refusal to submit to a chemical blood test shall be a civil offense.

17 (5) For a third or subsequent violation within a ~~five-year (5)~~ ten-year (10) period with
18 respect to a case of a refusal to submit to a blood test, a fine in the amount of eight hundred
19 dollars (\$800) to one thousand dollars (\$1,000); the person shall perform not less than one
20 hundred (100) hours of public community restitution; and the person's driving license in this state
21 shall be suspended for a period of two (2) to five (5) years. The sentencing judicial officer shall
22 prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock
23 system as provided in § 31-27-2.8. The judicial officer shall require alcohol and/or drug treatment
24 for the individual. Such a violation with respect to refusal to submit to a chemical test of blood
25 shall be a civil offense. Provided, that prior to the reinstatement of a license to a person charged
26 with a third or subsequent violation within a three-year (3) period, a hearing shall be held before a
27 judicial officer. At the hearing, the judicial officer shall review the person's driving record, his or
28 her employment history, family background, and any other pertinent factors that would indicate
29 that the person has demonstrated behavior that warrants the reinstatement of their license.

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

32 (7) In addition to any other fines, a highway safety assessment of five hundred dollars
33 (\$500) shall be paid by any person found in violation of this section, the assessment to be
34 deposited into the general fund. The assessment provided for by this subsection shall be collected

1 from a violator before any other fines authorized by this section.

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

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

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

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

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

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

22 (4) The person had been informed of the penalties incurred as a result of noncompliance
23 with this section, the judge shall sustain the violation. The judge shall then impose the penalties
24 set forth in subsection (b). Action by the judge must be taken within seven (7) days after the
25 hearing or it shall be presumed that the judge has refused to issue his or her order of suspension.

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

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

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

=====
LC003821
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

1 This act would extend the "lookback period" for second and subsequent offenses
2 involving driving under the influence of alcohol or drugs under § 31-27-2, and for offenses
3 related to failure or refusal to submit to chemical tests under § 31-27-2.1 from five (5) years to
4 ten (10) years.

5 This act would take effect upon passage.

=====
LC003821
=====