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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Senators Seveney, DiPalma, Coyne, Miller, and Euer

Date Introduced: February 25, 2020

Referred To: Senate Judiciary

(a)

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

1 subsection (d).

2 (c) In any criminal prosecution for a violation of subsection (a), evidence as to the amount
3 of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or
4 any combination of these, in the defendant's blood at the time alleged as shown by a chemical
5 analysis of the defendant's breath, blood, or urine or other bodily substance, shall be admissible and
6 competent, provided that evidence is presented that the following conditions have been complied
7 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 of
12 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 have
14 a true copy of the report of the test result mailed to him or her within thirty (30) days following the
15 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 tested
19 for accuracy within thirty (30) days preceding the test by personnel qualified as hereinbefore
20 provided, and breathalyzer operators shall be qualified and certified by the department of health
21 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 to
25 have an additional chemical test. The officer arresting or so charging the person shall have informed
26 the person of this right and afforded him or her a reasonable opportunity to exercise this right, and
27 a notation to this effect is made in the official records of the case in the police department. Refusal
28 to permit an additional chemical test shall render incompetent and inadmissible in evidence the
29 original report.

30 (d)(1)(i) Every person found to have violated subsection (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 presence
33 of any scheduled controlled substance as defined in subsection (b)(2), shall be subject to a fine of
34 not less than one hundred dollars (\$100), nor more than three hundred dollars (\$300); shall be

1 required to perform ten (10) to sixty (60) hours of public community restitution, and/or shall be
2 imprisoned for up to one year. The sentence may be served in any unit of the adult correctional
3 institutions in the discretion of the sentencing judge and/or shall be required to attend a special
4 course on driving while intoxicated or under the influence of a controlled substance; provided,
5 however, that the court may permit a servicemember or veteran to complete any court-approved
6 counseling program administered or approved by the Veterans' Administration, and his or her
7 driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days. The
8 sentencing judge or magistrate may prohibit that person from operating a motor vehicle that is not
9 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 than
13 one hundred (\$100) dollars, nor more than four hundred dollars (\$400), and shall be required to
14 perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned for
15 up to one year. The sentence may be served in any unit of the adult correctional institutions in the
16 discretion of the sentencing judge. The person's driving license shall be suspended for a period of
17 three (3) months to twelve (12) months. The sentencing judge shall require attendance at a special
18 course on driving while intoxicated or under the influence of a controlled substance and/or
19 alcoholic or drug treatment for the individual; provided, however, that the court may permit a
20 servicemember or veteran to complete any court-approved counseling program administered or
21 approved by the Veterans' Administration. The sentencing judge or magistrate may prohibit that
22 person from operating a motor vehicle that is not equipped with an ignition interlock system as
23 provided in § 31-27-2.8.

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

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

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

31 (3)(i) Every person convicted of a third or subsequent violation within a five-year (5)
32 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above,
33 but less than fifteen hundredths of one percent (.15%), or whose blood alcohol concentration is
34 unknown or who has a blood presence of any scheduled controlled substance as defined in

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

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

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

30 (4) Whoever drives or otherwise operates any vehicle in the state while under the influence
31 of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in chapter 28 of
32 title 21, or any combination of these, when his or her license to operate is suspended, revoked, or
33 cancelled for operating under the influence of a narcotic drug or intoxicating liquor, shall be guilty
34 of a felony punishable by imprisonment for not more than three (3) years and by a fine of not more

1 than three thousand dollars (\$3,000). The court shall require alcohol and/or drug treatment for the
2 individual; provided, the penalties provided for in this subsection (d)(4) shall not apply to an
3 individual who has surrendered his or her license and served the court-ordered period of suspension,
4 but who, for any reason, has not had his or her license reinstated after the period of suspension,
5 revocation, or suspension has expired; provided, further, the individual shall be subject to the
6 provisions of subdivision (d)(2)(i), (d)(2)(ii), (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) regarding subsequent
7 offenses, and any other applicable provision of this section.

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

10 (ii) Any person over the age of eighteen (18) who is convicted under this section for
11 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of
12 these, while a child under the age of thirteen (13) years was present as a passenger in the motor
13 vehicle when the offense was committed shall be subject to immediate license suspension pending
14 prosecution. Any person convicted of violating this section shall be guilty of a misdemeanor for a
15 first offense and may be sentenced to a term of imprisonment of not more than one year and a fine
16 not to exceed one thousand dollars (\$1,000). Any person convicted of a second or subsequent
17 offense shall be guilty of a felony offense and may be sentenced to a term of imprisonment of not
18 more than five (5) years and a fine not to exceed five thousand dollars (\$5,000). The sentencing
19 judge shall also order a license suspension of up to two (2) years, require attendance at a special
20 course on driving while intoxicated or under the influence of a controlled substance, and alcohol
21 or drug education and/or treatment. The individual may also be required to pay a highway
22 assessment fee of no more than five hundred dollars (\$500) and the assessment shall be deposited
23 in the general fund.

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

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

30 (iii) Any person convicted of a violation under this section shall be assessed a substance
31 abuse education fee of two hundred fifty dollars (\$250), which shall be deposited as general
32 revenues to be allocated by the department of behavioral healthcare, development disabilities and
33 hospitals (BHDDH) and used to fund substance abuse prevention programs and student assistance
34 programs for youth pursuant to chapters 21.1 and 21.3 of title 16, and in accordance with the criteria

1 [set forth in §§ 16-21.2-4\(a\) and 16-21.3-2\(a\).](#)

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

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

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

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

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

1 licensed by the department of behavioral healthcare, developmental disabilities and hospitals.

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

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

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

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

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

33 (j) An order to attend a special course on driving while intoxicated, that shall be
34 administered in cooperation with a college or university accredited by the state, shall include a

1 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
2 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
3 the general fund.

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

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

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

16 **31-27-2.1. Refusal to submit to chemical test.**

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

29 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the
30 person may file an affidavit with the division of motor vehicles stating the reasons why he or she
31 cannot be required to take blood tests and a notation to this effect shall be made on his or her
32 license. If that person is asked to submit to chemical tests as provided under this chapter, the person
33 shall only be required to submit to chemical tests of his or her breath or urine. When a person is
34 requested to submit to blood tests, only a physician or registered nurse, or a medical technician

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

19 (1) Impose, for the first violation, a fine in the amount of two hundred dollars (\$200) to
20 five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of
21 public community restitution. The person's driving license in this state shall be suspended for a
22 period of six (6) months to one year. The traffic tribunal judge or magistrate shall require attendance
23 at a special course on driving while intoxicated or under the influence of a controlled substance
24 and/or alcohol or drug treatment for the individual. The traffic tribunal judge or magistrate may
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.

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

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

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

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

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

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

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

11 (9) Any person convicted of a violation under this section shall be assessed a substance
12 abuse education fee of two hundred fifty dollars (\$250), which shall be deposited as general
13 revenues to be allocated by the department of behavioral healthcare, development disabilities and
14 hospitals (BHDDH) and used to fund substance abuse prevention programs and student assistance
15 programs for youth pursuant to chapters 21.1 and 21.3 of title 16, and in accordance with the criteria
16 set forth in §§ 16-21.2-4(a) and 16-21.3-2(a).

17 ~~(9)~~(10) 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 hearing
23 as early as practical upon receipt of a request in writing. Upon a hearing, the judge may administer
24 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books
25 and papers. If the judge finds after the hearing that:

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

1 forth in subsection (b). Action by the judge must be taken within seven (7) days after the hearing
2 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 is
5 considered a chemical test.

6 (e) If any provision of this section, or the application of any provision, shall, for any reason,
7 be judged invalid, the judgment shall not affect, impair, or invalidate the remainder of the section,
8 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 on January 1, 2021.

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LC004933
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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 impose a two hundred fifty dollar (\$250) substance abuse education
2 assessment for any conviction of driving under the influence or a violation for refusal to submit to
3 a breathalyzer. Those funds would be allocated to the department of behavioral healthcare,
4 developmental disabilities and hospitals (BHDDH) and used to fund substance abuse programs.

5 This act would take effect on January 1, 2021.

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