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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSE

Introduced By: Representative Gregg Amore

Date Introduced: February 24, 2021

Referred To: House Judiciary

(Attorney General)

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)~~ ten-  
32 year (10) period with a blood alcohol concentration of eight one-hundredths of one percent (.08%)  
33 or above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol  
34 concentration is unknown or who has a blood presence of any scheduled controlled substance as

1 defined in subsection (b)(2), regardless of whether any prior violation and subsequent conviction  
2 was a violation and subsequent conviction under this statute or under the driving under the influence  
3 of 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)~~ ten-  
14 year (10) period whose blood alcohol concentration is fifteen hundredths of one percent (.15%)  
15 above by weight as shown by a chemical analysis of a blood, breath, or urine sample, or who is  
16 under the influence of a drug, toluene, or any controlled substance as defined in subsection (b)(1),  
17 shall be subject to mandatory imprisonment of not less than three (3) years, nor more than five (5)  
18 years; a mandatory fine of not less than one thousand dollars (\$1,000), nor more than five thousand  
19 dollars (\$5,000); and a mandatory license suspension for a period of three (3) years from the date  
20 of completion of the sentence imposed under this subsection. The sentencing judge shall require  
21 alcohol or drug treatment for the individual. The sentencing judge or magistrate shall 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) In addition to the foregoing penalties, every person convicted of a third or subsequent  
25 violation within a ~~five-year (5)~~ ten-year (10) period, regardless of whether any prior violation and  
26 subsequent conviction was a violation and subsequent conviction under this statute or under the  
27 driving under the influence of liquor or drugs statute of any other state, shall be subject, in the  
28 discretion of the sentencing judge, to having the vehicle owned and operated by the violator seized  
29 and sold by the state of Rhode Island, with all funds obtained by the sale to be transferred to the  
30 general fund.

31 (4) Whoever drives or otherwise operates any vehicle in the state while under the influence  
32 of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in chapter 28 of  
33 title 21, or any combination of these, when his or her license to operate is suspended, revoked, or  
34 cancelled for operating under the influence of a narcotic drug or intoxicating liquor, shall be guilty

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

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

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

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

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

31 (7)(i) If the person convicted of violating this section is under the age of eighteen (18)  
32 years, for the first violation he or she shall be required to perform ten (10) to sixty (60) hours of  
33 public community restitution and the juvenile's driving license shall be suspended for a period of  
34 six (6) months, and may be suspended for a period up to eighteen (18) months. The sentencing

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

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

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

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

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

31 (2) Persons convicted under the provisions of this chapter shall be required to attend a  
32 special course on driving while intoxicated or under the influence of a controlled substance, and/or  
33 participate in an alcohol or drug treatment program; provided, however, that the court may permit  
34 a servicemember or veteran to complete any court-approved counseling program administered or

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

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

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

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

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

28 (j) An order to attend a special course on driving while intoxicated, that shall be  
29 administered in cooperation with a college or university accredited by the state, shall include a  
30 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars  
31 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into  
32 the general fund.

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



1 considered a chemical test.

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

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

11 **31-27-2.1. Refusal to submit to chemical test.**

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

24 (b) If a person, for religious or medical reasons, cannot be subjected to blood tests, the  
25 person may file an affidavit with the division of motor vehicles stating the reasons why he or she  
26 cannot be required to take blood tests and a notation to this effect shall be made on his or her  
27 license. If that person is asked to submit to chemical tests as provided under this chapter, the person  
28 shall only be required to submit to chemical tests of his or her breath or urine. When a person is  
29 requested to submit to blood tests, only a physician or registered nurse, or a medical technician  
30 certified under regulations promulgated by the director of the department of health, may withdraw  
31 blood for the purpose of determining the alcoholic content in it. This limitation shall not apply to  
32 the taking of breath or urine specimens. The person tested shall be permitted to have a physician of  
33 his or her own choosing, and at his or her own expense, administer chemical tests of his or her  
34 breath, blood, and/or urine in addition to the tests administered at the direction of a law enforcement

1 officer. If a person, having been placed under arrest, refuses upon the request of a law enforcement  
2 officer to submit to the tests, as provided in § 31-27-2, none shall be given, but a judge or magistrate  
3 of the traffic tribunal or district court judge or magistrate, upon receipt of a report of a law  
4 enforcement officer: that he or she had reasonable grounds to believe the arrested person had been  
5 driving a motor vehicle within this state under the influence of intoxicating liquor, toluene, or any  
6 controlled substance, as defined in chapter 28 of title 21, or any combination of these; that the  
7 person had been informed of his or her rights in accordance with § 31-27-3; that the person had  
8 been informed of the penalties incurred as a result of noncompliance with this section; and that the  
9 person had refused to submit to the tests upon the request of a law enforcement officer; shall  
10 promptly order that the person's operator's license or privilege to operate a motor vehicle in this  
11 state be immediately suspended, however, said suspension shall be subject to the hardship  
12 provisions enumerated in § 31-27-2.8. A traffic tribunal judge or magistrate, or a district court judge  
13 or magistrate, pursuant to the terms of subsection (c), shall order as follows:

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

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

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

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

9 (4) For a second violation within a five-year (5) period with respect to a case of a refusal  
10 to submit to a blood test, a fine in the amount of six hundred dollars (\$600) to one thousand dollars  
11 (\$1,000); the person shall perform sixty (60) to one hundred (100) hours of public community  
12 restitution; and the person's driving license in this state shall be suspended for a period of two (2)  
13 years. The judicial officer shall require alcohol and/or drug treatment for the individual. The  
14 sentencing judicial officer shall prohibit that person from operating a motor vehicle that is not  
15 equipped with an ignition interlock system as provided in § 31-27-2.8. Such a violation with respect  
16 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) period with respect to a case  
18 of a refusal to submit to a blood test, a fine in the amount of eight hundred dollars (\$800) to one  
19 thousand dollars (\$1,000); the person shall perform not less than one hundred (100) hours of public  
20 community restitution; and the person's driving license in this state shall be suspended for a period  
21 of two (2) to five (5) years. The sentencing judicial officer shall prohibit that person from operating  
22 a motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.  
23 The judicial officer shall require alcohol and/or drug treatment for the individual. Such a violation  
24 with respect to refusal to submit to a chemical test of blood shall be a civil offense. Provided, that  
25 prior to the reinstatement of a license to a person charged with a third or subsequent violation within  
26 a three-year (3) period, a hearing shall be held before a judicial officer. At the hearing, the judicial  
27 officer shall review the person's driving record, his or her employment history, family background,  
28 and any other pertinent factors that would indicate that the person has demonstrated behavior that  
29 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 deposited  
34 into the general fund. The assessment provided for by this subsection shall be collected from a

1 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 hearing  
12 as early as practical upon receipt of a request in writing. Upon a hearing, the judge may administer  
13 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books  
14 and papers. If the judge finds after the hearing that:

15 (1) The law enforcement officer making the sworn report had reasonable grounds to believe  
16 that the arrested person had been driving a motor vehicle within this state while under the influence  
17 of intoxicating liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or  
18 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 set  
24 forth in subsection (b). Action by the judge must be taken within seven (7) days after the hearing  
25 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 is  
28 considered a chemical test.

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

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

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1           This act would extend the "look back" period for a third and subsequent driving under the  
2 influence (DUI) and a refusal to submit to a chemical test to ten (10) years from the current five (5)  
3 years.

4           This act would take effect upon passage.

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