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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Representatives Walsh, DaSilva, and Martin

Date Introduced: January 18, 2012

Referred To: House 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.** – (a) Whoever drives or  
4 otherwise operates any vehicle in the state while under the influence of any intoxicating liquor,  
5 drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any  
6 combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3)  
7 and shall be punished as provided in subsection (d) of this section.

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

18           (2) Whoever drives or otherwise operates any vehicle in the state with a blood presence  
19 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by

1 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as  
2 provided in subsection (d) of this section.

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

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

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

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

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

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

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

31 (d) Every person found to have violated subdivision (b)(1) of this section shall be  
32 sentenced as follows: for a first violation whose blood alcohol concentration is eight one-  
33 hundredths of one percent (.08%) but less than one-tenth of one percent (.1%) by weight or who  
34 has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) shall

1 be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred  
2 dollars (\$300), shall be required to perform ten (10) to sixty (60) hours of public community  
3 restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit  
4 of the adult correctional institutions in the discretion of the sentencing judge and/or shall be  
5 required to attend a special course on driving while intoxicated or under the influence of a  
6 controlled substance; provided, however, that the court may permit a servicemember or veteran to  
7 complete any court-approved counseling program administered or approved by the Veterans'  
8 Administration, and his or her driver's license shall be suspended for thirty (30) days up to one  
9 hundred eighty (180) days.

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  
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.

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

34 (2) Every person convicted of a second violation within a ~~five (5)~~ ten (10) year period

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

18 (ii) Every person convicted of a second violation within a ~~five (5)~~ ten (10) year period  
19 whose blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by  
20 weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the  
21 influence of a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be  
22 subject to mandatory imprisonment of not less than six (6) months nor more than one year, a  
23 mandatory fine of not less than one thousand dollars (\$1,000) and a mandatory license suspension  
24 for a period of two (2) years from the date of completion of the sentence imposed under this  
25 subsection. The sentencing judge shall require alcohol or drug treatment for the individual;  
26 provided, however, that the court may permit a servicemember or veteran to complete any court  
27 approved counseling program administered or approved by the Veterans' Administration.

28 (3) Every person convicted of a third or subsequent violation within a ~~five (5)~~ ten (10)  
29 year period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or  
30 above but less than fifteen hundredths of one percent (.15%) or whose blood alcohol  
31 concentration is unknown or who has a blood presence of any scheduled controlled substance as  
32 defined in subdivision (b)(2) regardless of whether any prior violation and subsequent conviction  
33 was a violation and subsequent conviction under this statute or under the driving under the  
34 influence of liquor or drugs statute of any other state, shall be guilty of a felony and be subject to

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

11 (ii) Every person convicted of a third or subsequent violation within a ~~five (5)~~ ten (10)  
12 year period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above  
13 by weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the  
14 influence of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be  
15 subject to mandatory imprisonment of not less than three (3) years nor more than five (5) years, a  
16 mandatory fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars  
17 (\$5,000) and a mandatory license suspension for a period of three (3) years from the date of  
18 completion of the sentence imposed under this subsection.

19 (iii) In addition to the foregoing penalties, every person convicted of a third or  
20 subsequent violation within a ~~five (5)~~ ten (10) year period regardless of whether any prior  
21 violation and subsequent conviction was a violation and subsequent conviction under this statute  
22 or under the driving under the influence of liquor or drugs statute of any other state shall be  
23 subject, in the discretion of the sentencing judge, to having the vehicle owned and operated by the  
24 violator seized and sold by the state of Rhode Island, with all funds obtained by the sale to be  
25 transferred to the general fund.

26 (4) Whoever drives or otherwise operates any vehicle in the state while under the  
27 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in  
28 chapter 28 of title 21, or any combination of these, when his or her license to operate is  
29 suspended, revoked or cancelled for operating under the influence of a narcotic drug or  
30 intoxicating liquor shall be guilty of a felony punishable by imprisonment for not more than three  
31 (3) years and by a fine or not more than three thousand dollars (\$3,000). The court shall require  
32 alcohol and/or drug treatment for the individual; provided, the penalties provided for in  
33 subdivision 31-27-2(d)(4) shall not apply to an individual who has surrendered his or her license,  
34 and served the court ordered period of suspension, but who, for any reason, has not had their

1 license reinstated after the period of suspension, revocation, or suspension has expired; provided,  
2 further the individual shall be subject to the provisions of paragraphs 31-27-2(d)(2)(i) or (ii) or  
3 31-27-22(d)(3)(i), (ii), or (iii) regarding subsequent offenses, and any other applicable provision  
4 of section 31-27-2.

5 (5) For purposes of determining the period of license suspension, a prior violation shall  
6 constitute any charge brought and sustained under the provisions of this section or section 31-27-  
7 2.1.

8 (ii) Any person over the age of eighteen (18) who is convicted under this section for  
9 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of  
10 these, while a child under the age of thirteen (13) years was present as a passenger in the motor  
11 vehicle when the offense was committed may be sentenced to a term of imprisonment of not more  
12 than one year and further shall not be entitled to the benefit of suspension or deferment of this  
13 sentence. The sentence imposed under this section may be served in any unit of the adult  
14 correctional institutions in the discretion of the sentencing judge.

15 (6) Any person convicted of a violation under this section shall pay a highway assessment  
16 fine of five hundred dollars (\$500) which shall be deposited into the general fund. The assessment  
17 provided for by this subsection shall be collected from a violator before any other fines  
18 authorized by this section.

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

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

29 (ii) If the person convicted of violating this section is under the age of eighteen (18)  
30 years, for a second or subsequent violation regardless of whether any prior violation and  
31 subsequent conviction was a violation and subsequent under this statute or under the driving  
32 under the influence of liquor or drugs statute of any other state, he or she shall be subject to a  
33 mandatory suspension of his or her driving license until such time as he or she is twenty-one (21)  
34 years of age and may, in the discretion of the sentencing judge, also be sentenced to the Rhode

1 Island training school for a period of not more than one year and/or a fine of not more than five  
2 hundred dollars (\$500).

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

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

16 (f) There is established an alcohol and drug safety unit within the division of motor  
17 vehicles to administer an alcohol safety action program. The program shall provide for placement  
18 and follow-up for persons who are required to pay the highway safety assessment. The alcohol  
19 and drug safety action program will be administered in conjunction with alcohol and drug  
20 programs licensed by the department of mental health retardation and hospitals.

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

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

3           (g) The director of the health department of the state of Rhode Island is empowered to  
4 make and file with the secretary of state regulations which prescribe the techniques and methods  
5 of chemical analysis of the person's body fluids or breath, and the qualifications and certification  
6 of individuals authorized to administer this testing and analysis.

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

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

18           (j) An order to attend a special course on driving while intoxicated that shall be  
19 administered in cooperation with a college or university accredited by the state, shall include a  
20 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars  
21 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into  
22 the general fund.

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

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

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



1           **31-27-2.1. Refusal to submit to chemical test.** – (a) Any person who operates a motor  
2 vehicle within this state shall be deemed to have given his or her consent to chemical tests of his  
3 or her breath, blood, and/or urine for the purpose of determining the chemical content of his or  
4 her body fluids or breath. No more than two (2) complete tests, one for the presence of  
5 intoxicating liquor and one for the presence of toluene or any controlled substance, as defined in  
6 § 21-28-1.02(7), shall be administered at the direction of a law enforcement officer having  
7 reasonable grounds to believe the person to have been driving a motor vehicle within this state  
8 while under the influence of intoxicating liquor, toluene, or any controlled substance, as defined  
9 in chapter 28 of title 21, or any combination of these. The director of the department of health is  
10 empowered to make and file with the secretary of state, regulations which prescribe the  
11 techniques and methods of chemical analysis of the person's body fluids or breath and the  
12 qualifications and certification of individuals authorized to administer the testing and analysis.

13           (b) If a person for religious or medical reasons cannot be subjected to blood tests, the  
14 person may file an affidavit with the division of motor vehicles stating the reasons why he or she  
15 cannot be required to take blood tests, and a notation to this effect shall be made on his or her  
16 license. If that person is asked to submit to chemical tests as provided under this chapter, the  
17 person shall only be required to submit to chemical tests of his or her breath or urine. When a  
18 person is requested to submit to blood tests, only a physician or registered nurse or a medical  
19 technician certified under regulations promulgated by the director of the department of health  
20 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation  
21 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to  
22 have a physician of his or her own choosing and at his or her own expense administer chemical  
23 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction  
24 of a law enforcement officer. If a person having been placed under arrest refuses upon the request  
25 of a law enforcement officer to submit to the tests, as provided in section 31-27-2, none shall be  
26 given, but a judge of the traffic tribunal or district court judge, upon receipt of a report of a law  
27 enforcement officer: that he or she had reasonable grounds to believe the arrested person had  
28 been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene,  
29 or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; that  
30 the person had been informed of his or her rights in accordance with section 31-27-3; that the  
31 person had been informed of the penalties incurred as a result of noncompliance with this section;  
32 and that the person had refused to submit to the tests upon the request of a law enforcement  
33 officer; shall promptly order that the person's operator's license or privilege to operate a motor  
34 vehicle in this state be immediately suspended and that the person's license be surrendered within

1 five (5) days of notice of suspension. A traffic tribunal judge or a district court judge pursuant to  
2 the terms of subsection (c) of this section shall order as follows:

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

9 (2) Every person convicted for a second violation within a ~~five (5)~~ ten (10) year period  
10 shall be guilty of a misdemeanor, shall be imprisoned for not more than six (6) months and shall  
11 pay a fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the  
12 person to perform sixty (60) to one hundred (100) hours of public community restitution, and the  
13 person's driving license in this state shall be suspended for a period of one year to two (2) years.  
14 The judge shall require alcohol and/or drug treatment for the individual.

15 (3) Every person convicted for a third or subsequent violation within a ~~five (5)~~ ten (10)  
16 year period shall be guilty of a misdemeanor and shall be imprisoned for not more than one year,  
17 fined eight hundred dollars (\$800) to one thousand dollars (\$1,000), order the person to perform  
18 not less than one hundred (100) hours of public community restitution, and the person's operator's  
19 license in this state shall be suspended for a period of two (2) years to five (5) years. The judge  
20 shall require alcohol or drug treatment for the individual. Provided, that prior to the reinstatement  
21 of a license to a person charged with a third or subsequent violation within a three (3) year period,  
22 a hearing shall be held before a judge. At the hearing the judge shall review the person's driving  
23 record, his or her employment history, family background, and any other pertinent factors that  
24 would indicate that the person has demonstrated behavior which warrants the reinstatement of his  
25 or her license.

26 (4) For purposes of determining the period of license suspension, a prior violation shall  
27 constitute any charge brought and sustained under the provisions of this section or section 31-27-  
28 2.

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

33 (6) In addition to any other fines and highway safety assessments, a two hundred dollar  
34 (\$200) assessment shall be paid by any person found in violation of this section to support the

1 department of health's chemical testing programs outlined in section 31-27-2(4), which shall be  
2 deposited as general revenues, not restricted receipts.

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

6 (c) Upon suspending or refusing to issue a license or permit as provided in subsection (a)  
7 of this section, the traffic tribunal or district court shall immediately notify the person involved in  
8 writing, and upon his or her request, within fifteen (15) days shall afford the person an  
9 opportunity for a hearing as early as practical upon receipt of a request in writing. Upon a hearing  
10 the judge may administer oaths and may issue subpoenas for the attendance of witnesses and the  
11 production of relevant books and papers. If the judge finds after the hearing that: (1) the law  
12 enforcement officer making the sworn report had reasonable grounds to believe that the arrested  
13 person had been driving a motor vehicle within this state while under the influence of intoxicating  
14 liquor, toluene, or any controlled substance, as defined in chapter 28 of title 21, or any  
15 combination of these; (2) the person while under arrest refused to submit to the tests upon the  
16 request of a law enforcement officer; (3) the person had been informed of his or her rights in  
17 accordance with section 31-27-3; and (4) the person had been informed of the penalties incurred  
18 as a result of noncompliance with this section; the judge shall sustain the violation. The judge  
19 shall then impose the penalties set forth in subsection (b) of this section. Action by the judge must  
20 be taken within seven (7) days after the hearing, or it shall be presumed that the judge has refused  
21 to issue his or her order of suspension.

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

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

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

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

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1           This act would change the “lookback” period for second and subsequent offenses under  
2 section 31-27-2, driving under influence of liquor or drugs, and section 31-27-2.1, refusal to  
3 submit to chemical test, from five (5) to ten (10) years.

4           This act would take effect upon passage.

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