

2012 -- H 7849 SUBSTITUTE A

=====
LC01806/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————
A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Representatives O'Neill, Lally, and Petrarca

Date Introduced: February 28, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-27-2, 31-27-2.1 and 31-27-2.8 of the General Laws in Chapter
2 31-27 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) (1) 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
10 made. Evidence that the defendant had refused to submit to the test shall not be admissible unless
11 the 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) (1) (i) 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. [The sentencing judge may prohibit that person from operating a motor
10 vehicle that is not equipped with an ignition interlock system as provided in section 31-27-2.8.](#)

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

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

1 complete any court-approved counseling program administered or approved by the Veterans'
2 Administration. The sentencing judge shall prohibit that person from operating a motor vehicle
3 that is not equipped with an ignition interlock system as provided in section 31-27-2.8.

4 (2) (i) Every person convicted of a second violation within a five (5) year period with a
5 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than
6 fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or
7 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every
8 person convicted of a second violation within a five (5) year period regardless of whether the
9 prior violation and subsequent conviction was a violation and subsequent conviction under this
10 statute or under the driving under the influence of liquor or drugs statute of any other state, shall
11 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall
12 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to
13 not less than ten (10) days nor more than one year in jail. The sentence may be served in any unit
14 of the adult correctional institutions in the discretion of the sentencing judge; however, not less
15 than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge
16 shall require alcohol or drug treatment for the individual; provided, however, that the court may
17 permit a servicemember or veteran to complete any court-approved counseling program
18 administered or approved by the Veterans' Administration and ~~may~~ shall prohibit that person
19 from operating a motor vehicle that is not equipped with an ignition interlock system ~~for a period~~
20 ~~of one year to two (2) years following the completion of the sentence~~ as provided in section 31-
21 27-2.8.

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

34 (3) (i) Every person convicted of a third or subsequent violation within a five (5) year

1 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above
2 but less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is
3 unknown or who has a blood presence of any scheduled controlled substance as defined in
4 subdivision (b)(2) regardless of whether any prior violation and subsequent conviction was a
5 violation and subsequent conviction under this statute or under the driving under the influence of
6 liquor or drugs statute of any other state, shall be guilty of a felony and be subject to a mandatory
7 fine of four hundred (\$400) dollars. The person's driving license shall be suspended for a period
8 of two (2) years to three (3) years, and the individual shall be sentenced to not less than one year
9 and not more than three (3) years in jail. The sentence may be served in any unit of the adult
10 correctional institutions in the discretion of the sentencing judge; however, not less than forty-
11 eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall
12 require alcohol or drug treatment for the individual; provided, however, that the court may permit
13 a servicemember or veteran to complete any court-approved counseling program administered or
14 approved by the Veterans' Administration, and ~~may shall~~ prohibit that person from operating a
15 motor vehicle that is not equipped with an ignition interlock system ~~for a period of two (2) years~~
16 ~~following the completion of the sentence~~ as provided in section 31-27-2.8.

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

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

1 (4) Whoever drives or otherwise operates any vehicle in the state while under the
2 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in
3 chapter 28 of title 21, or any combination of these, when his or her license to operate is
4 suspended, revoked or cancelled for operating under the influence of a narcotic drug or
5 intoxicating liquor shall be guilty of a felony punishable by imprisonment for not more than three
6 (3) years and by a fine or not more than three thousand dollars (\$3,000). The court shall require
7 alcohol and/or drug treatment for the individual; provided, the penalties provided for in
8 subdivision 31-27-2(d)(4) shall not apply to an individual who has surrendered his or her license,
9 and served the court ordered period of suspension, but who, for any reason, has not had their
10 license reinstated after the period of suspension, revocation, or suspension has expired; provided,
11 further the individual shall be subject to the provisions of paragraphs 31-27-2(d)(2)(i) or (ii) or
12 31-27-22(d)(3)(i), (ii), or (iii) regarding subsequent offenses, and any other applicable provision
13 of section 31-27-2.

14 (5) (i) For purposes of determining the period of license suspension, a prior violation
15 shall constitute any charge brought and sustained under the provisions of this section or section
16 31-27-2.1.

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

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

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

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

1 influence of a controlled substance and alcohol or drug education and/or treatment for the
2 juvenile. The juvenile may also be required to pay a highway assessment fine of no more than
3 five hundred dollars (\$500), and the assessment imposed shall be deposited into the general fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) Every person convicted for a third or subsequent violation within a five (5) year
30 period shall be guilty of a misdemeanor and shall be imprisoned for not more than one year, fined
31 eight hundred dollars (\$800) to one thousand dollars (\$1,000), order the person to perform not
32 less than one hundred (100) hours of public community restitution, and the person's operator's
33 license in this state shall be suspended for a period of two (2) years to five (5) years. The judge
34 shall require alcohol or drug treatment for the individual. [The judge shall prohibit that person](#)

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

7 (4) For purposes of determining the period of license suspension, a prior violation shall
8 constitute any charge brought and sustained under the provisions of this section or section 31-27-
9 2.

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

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

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

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

1 be taken within seven (7) days after the hearing, or it shall be presumed that the judge has refused
2 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 which relies in whole or in part upon the principle of infrared light absorption
5 is considered a chemical test.

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

10 **31-27-2.8. Ignition interlock system imposed as part of sentence -- Requirements. --**

11 (a) Any person convicted under the provisions of section 31-27-2(d)(1)(2) or (3) (i) or (ii) or
12 whose violation is sustained under the provisions of section 31-27-2.1(b)(1) may be prohibited
13 by the sentencing judge or magistrate from operating a motor vehicle that is not equipped with an
14 ignition interlock system. Any person convicted under the provisions of section 31-
15 27(2)(d)(i)(iii), (2) or (3) or section 31-27-2.1 (b)(2) or (3) shall be prohibited by the sentencing
16 judge or magistrate from operating a motor vehicle that is not equipped with an ignition interlock
17 system. for a period of not more than two (2) years following the completion of any sentence
18 imposed pursuant to that section.

19 (b) Notwithstanding any other provisions contained in this chapter, after a finding of
20 eligibility, any mandatory period of license suspension may be reduced by the imposition of an
21 ignition interlock system ordered by the court or traffic tribunal as follows:

22 (1) For a violation of section 31-27-2(d)(1), a person shall be subject to a minimum thirty
23 (30) day license suspension and an imposition of an ignition interlock system for six (6) months
24 to one year.

25 (2) For a violation of section 31-27-2.1 (b)(1), a person shall be subject to a minimum
26 thirty (30) day license suspension and an imposition of an ignition interlock system for one to two
27 (2) years.

28 (3) For a violation of section 31-27-2(d)(2), a person shall be subject to a minimum sixty
29 (60) day license suspension and an imposition of an ignition interlock system for one to two (2)
30 years.

31 (4) For a violation of section 31-27-2.1 (b)(2), a person shall be subject to a minimum
32 sixty (60) day license suspension and an imposition of an ignition interlock system for two (2) to
33 four (4) years.

34 (5) For a violation of section 31-27-2(d)(3), a person shall be subject to a minimum

1 ninety (90) day license suspension and imposition of an ignition interlock system for two (2) to
2 four (4) years.

3 (6) For a violation of section 31-27-2.1 (b)(3), a person shall be subject to a minimum
4 ninety (90) day license suspension and imposition of an ignition interlock system for four (4) to
5 ten (10) years.

6 (c) Any person convicted of an offense of driving under the influence of liquor or drugs
7 resulting in death, section 31-27-2.2, driving under the influence of liquor or drugs resulting in
8 serious bodily injury, section 31-27-2.6, driving to endanger resulting in death, section 31-27-1,
9 or driving to endanger resulting in serious bodily injury, section 31-27-1.1 may, in addition to any
10 other penalties provided by law, be prohibited from operating a motor vehicle which is not
11 equipped with an approved ignition interlock system for one to five (5) years.

12 (d) Any person who operates a motor vehicle with a suspended license and the reason for
13 the suspension was due to a conviction of driving under the influence of drugs or alcohol or a
14 sustained violation or conviction of refusal to submit to a chemical test, shall be subject to the
15 imposition of an ignition interlock system for six (6) months to be ordered by the court or the
16 traffic tribunal.

17 (e) When the court orders the use of an ignition interlock system, the judge or magistrate
18 shall cause an appropriate notation to be made on the person's record which clearly sets forth the
19 requirement for and the period of the use of the ignition interlock system.

20 (f) In addition to the requirements of subsection (e) of this section, the court or traffic
21 tribunal shall:

22 (1) Require proof of the installation of the ignition interlock system and periodic
23 reporting by the person for the purpose of verification of the proper operation of the ignition
24 interlock system;

25 (2) Require the person to have the ignition interlock system monitored for the proper use
26 and accuracy by a person, firm, corporation or other association to be approved by the division of
27 motor vehicles at least once every six (6) months, or more frequently as the circumstances may
28 require; and

29 (3) Shall require the person to pay the reasonable cost of leasing or buying, monitoring
30 and maintenance of the ignition interlock system.

31 (g) If a person is required, in the course of the person's employment, to operate a motor
32 vehicle owned or provided by the person's employer, the person may operate that motor vehicle
33 in the course of the person's employment without installation of an ignition interlock system if
34 the court makes specific findings expressly permitting the person to operate in the course of the

1 person's employment a motor vehicle that is not equipped with an ignition interlock system.

2 (h) Any person subject to an ignition interlock order who violates such order shall be
3 guilty of a misdemeanor punishable by up to one year imprisonment or a fine of up to one
4 thousand dollars (\$1,000), or both. For the purposes of this subsection, a violation of the interlock
5 order, includes, but is not limited to:

6 (1) Altering, tampering or in any way attempting to circumvent the operation of an
7 ignition interlock system that has been installed in the motor vehicle of a person under this
8 section;

9 (2) Operating a motor vehicle that is not equipped with an ignition interlock system;

10 (3) Soliciting or attempting to have another person start a motor vehicle equipped with an
11 ignition interlock system for the purpose of providing an operable motor vehicle to a person who
12 is prohibited from operating a motor vehicle that is not equipped with an ignition interlock
13 system.

14 (i) Any person who attempts to start or starts a motor vehicle equipped with an ignition
15 interlock system, tampers with or in any way attempts to circumvent, the operation of an ignition
16 interlock system that has been installed in the motor vehicle for the purpose of providing an
17 operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not
18 equipped with an ignition interlock system shall be guilty of a misdemeanor punishable by up to
19 one year imprisonment or a fine of up to one thousand dollars (\$1,000), or both.

20 SECTION 2. Sections 31-49-2, 31-49-3, 31-49-4, 31-49-5 and 31-49-6 of the General
21 Laws in Chapter 31-49 entitled "Ignition Interlock Systems" are hereby amended to read as
22 follows:

23 **31-49-2. Certification of ignition interlock systems. --** The division of motor vehicles
24 shall certify or cause to be certified ignition interlock systems for use in the state, and adopt rules
25 and regulations for the certification and requirements for participation of the ignition interlock
26 systems. All costs associated with the installation of the interlock ignition system shall be borne
27 by the person required to install said system and the division shall charge an administrative fee of
28 one hundred dollars (\$100) to the person ordered to install said system.

29 **31-49-3. Rules and regulations. --** The rules and regulations adopted pursuant to section
30 31-49-2 shall include ~~requirements that ignition interlock systems:~~

31 (a) Requirements that ignition interlock systems:

32 (1) Do not impede the safe operation of the vehicle;

33 (2) Minimize opportunities to be bypassed;

34 (3) Correlate accurately with established measures of blood alcohol levels;

- 1 (4) Work accurately and reliably in an unsupervised environment;
- 2 (5) Require a proper and accurate measure of blood alcohol levels;
- 3 (6) Resist tampering and provide evidence of attempted tampering;
- 4 (7) Are difficult to circumvent, and require premeditation to circumvent;
- 5 (8) Minimize inconvenience to a sober user;
- 6 (9) Are manufactured by a party responsible for installation, user training, service and
- 7 maintenance;
- 8 (10) Operate reliably over the range of motor vehicle environments or motor vehicle
- 9 manufacturing standards;
- 10 (11) Are manufactured by a person who is adequately insured for products liability; and
- 11 (12) Provide the option for an electronic log of the driver's experience with the system.

12 (b) Prior to the reinstatement of an unrestricted license, the division of motor vehicles
13 shall review the person's driving record and compliance with the ignition interlock order to
14 ensure that the person demonstrated behavior which warrants the reinstatement of his or her
15 license. In the event of non-compliance, the division of motor vehicles has the authority to
16 impose an additional term of the ignition interlock restriction, but in no instance shall this exceed
17 one year from the completion of the original ignition interlock order.

18 **31-49-4. Warning label.** -- (a) (1) The division of motor vehicles shall design and adopt
19 a warning label to be affixed to an ignition interlock system on installation. The warning label
20 shall state that a person tampering with, circumventing, or otherwise misusing the ignition
21 interlock system is guilty of a misdemeanor, and on conviction, is subject to a fine up to ~~five~~
22 ~~hundred dollars (\$500), or one thousand dollars (\$1,000),~~ one year imprisonment, or both.

23 ~~(2) If the court imposes the use of an ignition interlock system, the sentencing judge~~
24 ~~shall cause an appropriate notation to be made on the person's record which clearly sets forth the~~
25 ~~requirement for and the period of the use of the system.~~

26 ~~(b) In addition to the requirements of subsection (a) of this section, the court shall:~~

27 ~~(1) Require proof of the installation of the system and periodic reporting by the person~~
28 ~~for the purpose of verification of the proper operation of the system; and~~

29 ~~(2) Require the person to have the system monitored for the proper use and accuracy by~~
30 ~~a person, firm, corporation or other association to be approved by the department of revenue at~~
31 ~~least once every six (6) months, or more frequently as the circumstances may require; and~~

32 ~~(3) Shall require the person to pay the reasonable cost of leasing or buying, monitoring~~
33 ~~and maintenance of the system.~~

34 ~~(c) A person prohibited under this section from operating a motor vehicle that is not~~

1 ~~equipped with an ignition interlock system may not solicit or have another person attempt to start~~
2 ~~or start a motor vehicle equipped with an ignition interlock system.~~

3 ~~(d) A person may not attempt to start or start a motor vehicle equipped with an ignition~~
4 ~~interlock system for the purpose of providing an operable motor vehicle to a person who is~~
5 ~~prohibited under this section from operating a motor vehicle that is not equipped with an ignition~~
6 ~~interlock system.~~

7 ~~(e) A person may not tamper with, or in any way attempt to circumvent, the operation of~~
8 ~~an ignition interlock system that has been installed in the motor vehicle of a person under this~~
9 ~~section.~~

10 ~~(f) (1) Subject to the provisions of subdivision (2) of this subsection, a person may not~~
11 ~~knowingly furnish a motor vehicle not equipped with a functioning ignition interlock system to~~
12 ~~another person who the person knows is prohibited under subsection (b) of this section from~~
13 ~~operating a motor vehicle not equipped with an ignition interlock system.~~

14 ~~(2) If a person is required, in the course of the person's employment, to operate a motor~~
15 ~~vehicle owned or provided by the person's employer, the person may operate that motor vehicle~~
16 ~~in the course of the person's employment without installation of an ignition interlock system if the~~
17 ~~court has expressly permitted the person to operate in the course of the person's employment a~~
18 ~~motor vehicle that is not equipped with an ignition interlock system.~~

19 ~~(g) Any person who shall violate the provisions of this section shall be guilty of a~~
20 ~~misdemeanor.~~

21 **31-49-5. List of certified ignition interlock systems.** -- (a) The ~~administration~~ division
22 of motor vehicles shall publish a list of certified ignition interlock systems which shall be
23 included on the division of motor vehicles' website.

24 (b) A manufacturer of an ignition interlock system that seeks to sell or lease the ignition
25 interlock system to persons subject to the provisions of section 31-27-2 shall pay the costs of
26 obtaining the required certification.

27 (c) Said manufacturer who shall install and monitor said systems shall be approved by the
28 division of motor vehicles every year. Said manufacturer shall also submit quarterly reports
29 concerning proof of installation and proper use of said ignition interlock systems to the division
30 of motor vehicles, which will be aggregated by the division of motor vehicles.

31 **31-49-6. Selling or leasing ignition interlock systems.** -- (a) A person may not sell or
32 lease or offer to sell or lease an ignition interlock system to a person subject to the provisions of
33 section ~~31-27-2~~ 31-27-2.8 unless:

34 (1) The system has been certified by the ~~department~~ division of motor vehicles; and

1 (2) A warning label approved by the ~~department~~ division of motor vehicles is affixed to
2 the system stating that a person who tampers, circumvents, or otherwise misuses the system is
3 guilty of a misdemeanor, and on conviction is subject to a fine up to ~~five hundred dollars (\$500)~~
4 one thousand dollars (\$1,000), or one year imprisonment, or both.

5 (b) A person who sells or leases ignition interlock systems in the state shall:

6 (1) Monitor the use of the system as required by the ~~court~~ division of motor vehicles; and

7 (2) Issue a report of the results of the monitoring to the appropriate office of the division
8 of motor vehicles and the division of parole and probation.

1 SECTION 3. This act shall take effect on January 1, 2013.

=====
LC01806/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

1 This act would grant judges and magistrates the authority to prohibit drivers adjudicated
2 of certain motor vehicle offenses from operating a motor vehicle not equipped with an ignition
3 interlock system.

4 This act would take effect on January 1, 2013.

=====
LC01806/SUB A
=====