

2018 -- H 7223 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Representatives Nardolillo, Craven, Costantino, Azzinaro, and Canario

Date Introduced: January 18, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 31-27-2 of the General Laws in Chapter 31-27 entitled "Motor
2 Vehicle Offenses" is hereby amended to read as follows:

3 **31-27-2. Driving under influence of liquor or drugs.**

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

8 (b) (1) Any person charged under subsection (a), whose blood alcohol concentration is
9 eight one-hundredths of one percent (.08%) or more by weight, as shown by a chemical analysis
10 of a blood, breath, or urine sample, shall be guilty of violating subsection (a). This provision shall
11 not preclude a conviction based on other admissible evidence. Proof of guilt under this section
12 may also be based on evidence that the person charged was under the influence of intoxicating
13 liquor, drugs, toluene, or any controlled substance defined in chapter 28 of title 21, or any
14 combination of these, to a degree that rendered the person incapable of safely operating a vehicle.
15 The fact that any person charged with violating this section is, or has been, legally entitled to use
16 alcohol or a drug shall not constitute a defense against any charge of violating this section.

17 (2) Whoever drives, or otherwise operates, any vehicle in the state with a blood presence
18 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by
19 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as

1 provided in subsection (d).

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

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

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

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

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

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

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

30 (d) (1) (i) Every person found to have violated subdivision (b)(1) shall be sentenced as
31 follows: for a first violation whose blood alcohol concentration is eight one-hundredths of one
32 percent (.08%), but less than one-tenth of one percent (.1%), by weight, or who has a blood
33 presence of any scheduled controlled substance as defined in subdivision (b)(2), shall be subject
34 to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300);

1 shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or
2 shall be imprisoned for up to one year. The sentence may be served in any unit of the adult
3 correctional institutions in the discretion of the sentencing judge and/or shall be required to attend
4 a special course on driving while intoxicated or under the influence of a controlled substance;
5 provided, however, that the court may permit a servicemember or veteran to complete any court-
6 approved counseling program administered or approved by the Veterans' Administration, and his
7 or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.
8 The sentencing judge or magistrate may prohibit that person from operating a motor vehicle that
9 is not equipped with an ignition interlock system as provided in § 31-27-2.8.

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

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

1 Administration. The sentencing judge or magistrate shall prohibit that person from operating a
2 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

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

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

32 (3) (i) Every person convicted of a third or subsequent violation within a five-year (5)
33 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or
34 above, but less than fifteen hundredths of one percent (.15%), or whose blood alcohol

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

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

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

32 (4) Whoever drives or otherwise operates any vehicle in the state while under the
33 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in
34 chapter 28 of title 21, or any combination of these, when his or her license to operate is

1 suspended, revoked, or cancelled for operating under the influence of a narcotic drug or
2 intoxicating liquor, shall be guilty of a felony punishable by imprisonment for not more than three
3 (3) years and by a fine of not more than three thousand dollars (\$3,000). The court shall require
4 alcohol and/or drug treatment for the individual; provided, the penalties provided for in § 31-27-
5 2(d)(4) shall not apply to an individual who has surrendered his or her license and served the
6 court-ordered period of suspension, but who, for any reason, has not had his or her license
7 reinstated after the period of suspension, revocation, or suspension has expired; provided, further,
8 the individual shall be subject to the provisions of subdivision (d)(2)(i), (d)(2)(ii), (d)(3)(i),
9 (d)(3)(ii), or (d)(3)(iii) regarding subsequent offenses, and any other applicable provision of this
10 section.

11 (5) (i) For purposes of determining the period of license suspension, a prior violation
12 shall constitute any charge brought and sustained under the provisions of this section or § 31-27-
13 2.1.

14 (ii) Any person over the age of eighteen (18) who is convicted under this section for
15 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of
16 these, while a child under the age of thirteen (13) years was present as a passenger in the motor
17 vehicle when the offense was committed, ~~may be sentenced to a term of imprisonment of not~~
18 ~~more than one year, and further, shall not be entitled to the benefit of suspension or deferment of~~
19 ~~this sentence. The sentence imposed under this section may be served in any unit of the adult~~
20 ~~correctional institutions in the discretion of the sentencing judge~~ shall be subject to immediate
21 license suspension pending prosecution. Any person convicted of violating this section shall be
22 guilty of a misdemeanor for a first offense and may be sentenced to a term of imprisonment of not
23 more than one year and a fine not to exceed one thousand dollars (\$1000). Any person convicted
24 of a second or subsequent offense shall be guilty of a felony offense and may be sentenced to a
25 term of imprisonment of not more than five (5) years and a fine not to exceed five thousand
26 dollars (\$5000). The sentencing judge shall also order a license suspension of up to two (2) years,
27 require attendance at a special course on driving while intoxicated or under the influence of a
28 controlled substance and alcohol or drug education and/or treatment. The individual may also be
29 required to pay a highway assessment fee of no more than five hundred dollars (\$500) and the
30 assessment shall be deposited in the general fund.

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

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

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

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

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

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

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

1 and drug safety action program will be administered in conjunction with alcohol and drug
2 programs licensed by the department of behavioral healthcare, developmental disabilities and
3 hospitals.

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

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

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

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

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

1 (j) An order to attend a special course on driving while intoxicated that shall be
2 administered in cooperation with a college or university accredited by the state, shall include a
3 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
4 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
5 the general fund.

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

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

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

18 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

1 This act would provide that any person who operates a motor vehicle while under the
2 influence of alcohol or a controlled substance with a child under the age of thirteen (13) years of
3 age would be subject to an immediate license suspension and would make a subsequent offense
4 punishable as a felony. It would also make the violator subject to a license suspension for up to
5 two (2) years and require the violator to complete a course on driving while under the influence
6 of alcohol or drugs and subject the violator to a highway assessment fee which would be
7 deposited into the general fund.

8 This act would take effect upon passage.

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