LC02909

### 2010 -- H 8265

# STATE OF RHODE ISLAND

#### IN GENERAL ASSEMBLY

### JANUARY SESSION, A.D. 2010

#### AN ACT

#### RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

Introduced By: Representatives D Caprio, Marcello, A Rice, Hearn, and Williams Date Introduced: June 09, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Sections 31-27-2 and 31-27-2.8 of the General Laws in Chapter 31-27
 entitled "Motor Vehicle Offenses" are hereby amended to read as follows:

3 <u>31-27-2. Driving under influence of liquor or drugs. --</u> (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.

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

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

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

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

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

(4) The test was performed according to methods and with equipment approved by thedirector 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.

(6) The person arrested and charged with operating a motor vehicle while under the 23 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.

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

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be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300), shall be required to perform ten (10) to sixty (60) hours of public community restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit of the adult correctional institutions in the discretion of the sentencing judge and/or shall be required to attend a special course on driving while intoxicated or under the influence of a controlled substance, and his or her driver's license shall be suspended for thirty (30) days up to one hundred eighty (180) days.

8 (ii) Every person convicted of a first violation whose blood alc ohol concentration is one-9 tenth of one percent (.1%) by weight or above but less than fifteen hundredths of one percent 10 (.15%) or whose blood alcohol concentration is unknown shall be subject to a fine of not less than 11 one hundred (\$100) dollars nor more than four hundred dollars (\$400) and shall be required to 12 perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned 13 for up to one year. The sentence may be served in any unit of the adult correctional institutions in 14 the discretion of the sentencing judge. The person's driving license shall be suspended for a 15 period of three (3) months to twelve (12) months. The sentencing judge shall require attendance 16 at a special course on driving while intoxicated or under the influence of a controlled substance 17 and/or alcoholic or drug treatment for the individual.

18 (iii) Every person convicted of a first offense whose blood alcohol concentration is 19 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug, 20 toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to a fine of 21 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of 22 public community restitution and/or shall be imprisoned for up to one year. The sentence may be 23 served in any unit of the adult correctional institutions in the discretion of the sentencing judge. 24 The person's driving license shall be suspended for a period of three (3) months to eighteen (18) 25 months. The sentencing judge shall require attendance at a special course on driving while 26 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for 27 the individual.

(2) (i) Every person convicted of a second violation within a five (5) year period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every person convicted of a second violation within a five (5) year period regardless of whether the prior violation and subsequent conviction was a violation and subsequent conviction under this statute or under the driving under the influence of liquor or drugs statute of any other state, shall

1 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall 2 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to 3 not less than ten (10) days nor more than one year in jail. The sentence may be served in any unit 4 of the adult correctional institutions in the discretion of the sentencing judge; however, not less 5 than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge 6 shall require alcohol or drug treatment for the individual, and may prohibit that person from 7 operating a motor vehicle that is not equipped with an ignition interlock system for a period of 8 one year to two (2) years following the completion of the sentence as provided in section 31-27-<del>2.8</del>. 9

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(ii) Every person convicted of a second violation within a five (5) year period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to mandatory imprisonment of not less than six (6) months nor more than one year, a mandatory fine of not less than one thousand dollars (\$1,000) and a mandatory license suspension for a period of two (2) years from the date of completion of the sentence imposed under this subsection.

17 (3) (i) Every person convicted of a third or subsequent violation within a five (5) year 18 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above 19 but less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is 20 unknown or who has a blood presence of any scheduled controlled substance as defined in 21 subdivision (b)(2) regardless of whether any prior violation and subsequent conviction was a 22 violation and subsequent conviction under this statute or under the driving under the influence of 23 liquor or drugs statute of any other state, shall be guilty of a felony and be subject to a mandatory fine of four hundred (\$400) dollars. The person's driving license shall be suspended for a period 24 25 of two (2) years to three (3) years, and the individual shall be sentenced to not less than one year 26 and not more than three (3) years in jail. The sentence may be served in any unit of the adult 27 correctional institutions in the discretion of the sentencing judge; however, not less than forty-28 eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall 29 require alcohol or drug treatment for the individual, and may prohibit that person from operating 30 a motor vehicle that is not equipped with an ignition interlock system for a period of two (2) years 31 following the completion of the sentence as provided in section 31-27-2.8.

(ii) Every person convicted of a third or subsequent violation within a five (5) year
period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by
weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the

1 influence of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be 2 subject to mandatory imprisonment of not less than three (3) years nor more than five (5) years, a 3 mandatory fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars 4 (\$5,000) and a mandatory license suspension for a period of three (3) years from the date of 5 completion of the sentence imposed under this subsection.

6 (iii) In addition to the foregoing penalties, every person convicted of a third or 7 subsequent violation within a five (5) year period regardless of whether any prior violation and 8 subsequent conviction was a violation and subsequent conviction under this statute or under the 9 driving under the influence of liquor or drugs statute of any other state shall be subject, in the 10 discretion of the sentencing judge, to having the vehicle owned and operated by the violator 11 seized and sold by the state of Rhode Island, with all funds obtained by the sale to be transferred 12 to the general fund.

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

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

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

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(ii) Any person convicted of a violation under this section shall be assessed a fee. The 28 fee shall be as follows:

29	FISCAL YEAR	FISCAL YEAR	FISCAL YEAR
30	1993-1995	1996-1999	2000-2010
31	\$147	\$173	\$86

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

six (6) months, and may be suspended for a period up to eighteen (18) months. The sentencing judge shall also require attendance at a special course on driving while intoxicated or under the influence of a controlled substance and alcohol or drug education and/or treatment for the juvenile. The juvenile may also be required to pay a highway assessment fine of no more than five hundred dollars (\$500), and the assessment imposed shall be deposited into the general fund.

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6 (ii) If the person convicted of violating this section is under the age of eighteen (18) 7 years, for a second or subsequent violation regardless of whether any prior violation and 8 subsequent conviction was a violation and subsequent under this statute or under the driving 9 under the influence of liquor or drugs statute of any other state, he or she shall be subject to a 10 mandatory suspension of his or her driving license until such time as he or she is twenty-one (21) 11 years of age and may, in the discretion of the sentencing judge, also be sentenced to the Rhode 12 Island training school for a period of not more than one year and/or a fine of not more than five 13 hundred dollars (\$500).

(7) Any person convicted of a violation under this section may undergo a clinical assessment at a facility approved by the department of mental health retardation and hospitals. Should this clinical assessment determine problems of alcohol, drug abuse, or psychological problems associated with alcoholic or drug abuse, this person shall be referred to the T.A.S.C. (treatment alternatives to street crime) program for treatment placement, case management, and monitoring.

(8) Notwithstanding any other provision contained in this chapter, after motion and
hearing thereon, any mandatory period of license suspension shall be reduced by the imposition
of an auto ignition interlock system ordered by the court pursuant to section 31-27-2.8 as follows:
(i)(A) For a first offense a person whose blood alcohol concentration is eight onehundredths of one percent (.08%) or above but less then fifteen hundredths of one percent (.15%),
shall be subject to a thirty (30) day suspension and a six (6) month imposition of an auto ignition
interlock system as provided pursuant to section 31-27-2.8.

(B) For a first offense a person whose blood alcohol concentration is fifteen hundredths
of one percent (.15%) or greater, shall be subject to a thirty (30) day suspension and a six (6) to
twelve (12) month imposition of an auto ignition interlock system as provided pursuant to section
<u>31-27-2.8.</u>
(ii)(A) For a second offense, a person whose blood alcohol concentration is eight one-

32 <u>hundredths of one percent (.08%) or above but less than fifteen hundredths of one percent (.15%),</u>
33 shall be subject to a sixty (60) day suspension and a one to two (2) year imposition of an auto

34 ignition interlock system as provided pursuant to section 31-27-2.8.

(B) For a second offense a person whose blood alcohol concentration is fifteen
 hundredths of one percent (.15%) or greater, shall be subject to a ninety (90) day suspension and
 a one to three (3) year imposition of an auto ignition interlock system as provided pursuant to
 section 31-27-2.8.
 (iii)(A) For the third offense, a person whose blood alcohol concentration is eight one-

6 <u>hundredths of one percent (.08%) or above but less than fifteen hundredths of one percent (.15%)</u>,

7 the person shall be subject to a ninety (90) day suspension and a two (2) to four (4) year

8 imposition of an auto ignition interlock system as provided pursuant to section 31-27-2.8.

9 (B) For a third offense, a person whose blood alcohol concentration is fifteen hundredths
 10 of one percent (.15%) or greater, shall be subject to a one hundred twenty (120) day suspension

11 and a two (2) to five (5) year imposition of an auto ignition interlock system as provided pursuant

12 <u>to section 31-27-2.8.</u>

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

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

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

32 (3) The alcohol and drug safety action program within the division of motor vehicles33 shall be funded by general revenue appropriations.

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(g) The director of the health department of the state of Rhode Island is empowered to

make and file with the secretary of state regulations which prescribe the techniques and methods
of chemical analysis of the person's body fluids or breath, and the qualifications and certification
of individuals authorized to administer this testing and analysis.

4 (h) Jurisdiction for misdemeanor violations of this section shall be with the district court 5 for persons eighteen (18) years of age or older and to the family court for persons under the age 6 of eighteen (18) years. The courts shall have full authority to impose any sentence authorized and 7 to order the suspension of any license for violations of this section. All trials in the district court 8 and family court of violations of the section shall be scheduled within thirty (30) days of the 9 arraignment date. No continuance or postponement shall be granted except for good cause shown. 10 Any continuances that are necessary shall be granted for the shortest practicable time. Trials in 11 superior court are not required to be scheduled within thirty (30) days of the arraignment date.

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

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

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

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

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

Any person convicted under the provisions of section 31 27 2(d)(2) or (3) may be prohibited by the sentencing judge from operating a motor vehicle that is not equipped with an ignition interlock system for a period of not more than two (2) years following the completion of any sentence imposed pursuant to that section.

(a) Any person convicted of a first offense of driving under the influence of liquor or
 drugs, section 31-27-2, may in addition to any other penalties provided by law, be prohibited
 from operating a motor vehicle which is not equipped with an approved ignition interlock system

1 for six (6) months to one year.

2	(b) Any person convicted of a second or subsequent offense of driving under the
3	influence of liquor or drugs, section 31-27-2, may, in addition to any other penalties provided by
4	law, be prohibited from operating a motor vehicle which is not equipped with an approved
5	ignition interlock system for two (2) to four (4) 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 shall, in addition to
10	any 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 drives with a suspended license and the reason for the suspension
13	was a consequence of driving under the influence of drugs or alcohol, or refusal to submit to a
14	chemical test, shall be subject to an additional six (6) months use of the ignition interlock system.
15	(e) Any person who drives in violation of an ignition interlock order, including, but not
16	limited to, altering or tampering with said device, shall be guilty of a misdemeanor punishable by
17	up to one year imprisonment or a fine of up to one thousand dollars (\$1,000), or both.
18	(f) Notwithstanding the provisions above, the court shall have the discretion to prohibit
19	any person convicted of a motor vehicle offense from operating a motor vehicle that is not
20	equipped with an approved ignition interlock system.
21	SECTION 2. Sections 31-49-2, 31-49-4 and 31-49-5 of the General Laws in Chapter 31-
22	49 entitled "Ignition Interlock Systems" are hereby amended to read as 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 systems 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 unless the defendant is
29	indigent as defined by sections 12-20-10 and 12-21-20.
30	31-49-4. Warning label (a) (1) The division of motor vehicles shall design and adopt
31	a warning label to be affixed to an ignition interlock system on installation. The warning label
32	shall state that a person tampering with, circumventing, or otherwise misusing the ignition
33	interlock system is guilty of a misdemeanor, and on conviction, is subject to a fine up to five

34 hundred dollars (\$500), or one year imprisonment, or both.

1 (2) If When the court imposes the use of an ignition interlock system, the sentencing 2 judge shall cause an appropriate notation to be made on the person's record which clearly sets 3 forth the requirement for and the period of the use of the system. 4 (b) In addition to the requirements of subsection (a) of this section, the court shall: 5 (1) Require proof of the installation of the system and periodic reporting by the person for the purpose of verification of the proper operation of the system; and 6 7 (2) Require the person to have the proof of installation and the monitoring of the system 8 monitored for the proper use and accuracy by a person, firm, corporation or other association to 9 be approved by the department of revenue at least once every six (6) months, or more frequently 10 as the circumstances may require; Said person, firm, corporation or other association who shall 11 install and monitor said systems shall be approved by the division of motor vehicles every six (6) 12 months. Said person, firm, corporation or other association shall also submit quarterly reports 13 concerning proof of installation and proper use of said ignition interlock systems to the division 14 of the motor vehicles, which will be aggregated by the division of motor vehicles and sent to the 15 appropriate court; and 16 (3) Shall require the person to pay the reasonable cost of leasing or buying, monitoring 17 and maintenance of the system. 18 (c) A person prohibited under this section from operating a motor vehicle that is not 19 equipped with an ignition interlock system may not solicit or have another person attempt to start 20 or start a motor vehicle equipped with an ignition interlock system. 21 (d) A person may not attempt to start or start a motor vehicle equipped with an ignition 22 interlock system for the purpose of providing an operable motor vehicle to a person who is 23 prohibited under this section from operating a motor vehicle that is not equipped with an ignition 24 interlock system. 25 (e) A person may not tamper with, or in any way attempt to circumvent, the operation of

an ignition interlock system that has been installed in the motor vehicle of a person under thissection.

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

(2) If a person is required, in the course of the person's employment, to operate a motor
vehicle owned or provided by the person's employer, the person may operate that motor vehicle
in the course of the person's employment without installation of an ignition interlock system if the

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- court has expressly permitted the person to operate in the course of the person's employment a
   motor vehicle that is not equipped with an ignition interlock system.
- 3 (g) Any person who shall violate the provisions of this section shall be guilty of a
  4 misdemeanor punishable up to one year imprisonment or a fine of up to one thousand dollars
  5 (\$1,000) or both.
- <u>31-49-5. List of certified ignition interlock systems. --</u> (a) The administration division
  of motor vehicles shall publish a list of certified ignition interlock systems which shall be
  included on the division of motor vehicles website.
- 9 (b) A manufacturer of an ignition interlock system that seeks to sell or lease the ignition
- 10 interlock system to persons subject to the provisions of section 31-27-2 shall pay the costs of
- 11 obtaining the required certification.
- 12 SECTION 3. This act shall take effect March 1, 2011.

LC02909

## EXPLANATION

### BY THE LEGISLATIVE COUNCIL

### OF

## AN ACT

## RELATING TO MOTOR AND OTHER VEHICLES - MOTOR VEHICLE OFFENSES

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- 1 This act would amend various provisions relative to the use of an ignition interlock
- 2 system for certain motor vehicle offenses.
  - This act would take effect March 1, 2011.

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