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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- DRIVING UNDER THE INFLUENCE
OF LIQUOR OR DRUGS

Introduced By: Senators Raptakis, Sosnowski, E O'Neill, Walaska, and Lombardo

Date Introduced: February 05, 2015

Referred To: Senate 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. [Effective January 1, 2015.] --**

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

1 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by
2 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as
3 provided in subsection (d) of this section.

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

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

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

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

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

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

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

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

1 has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2), shall
2 be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred
3 dollars (\$300); shall be required to perform ten (10) to sixty (60) hours of public community
4 restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit
5 of the adult correctional institutions in the discretion of the sentencing judge and/or shall be
6 required to attend a special course on driving while intoxicated or under the influence of a
7 controlled substance; provided, however, that the court may permit a servicemember or veteran to
8 complete any court-approved counseling program administered or approved by the Veterans'
9 Administration, and his or her driver's license shall be suspended for thirty (30) days up to one
10 hundred eighty (180) days. The sentencing judge or magistrate may prohibit that person from
11 operating a motor vehicle that is not equipped with an ignition interlock system as provided in §
12 31-27-2.8.

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

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

1 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for
2 the individual; provided, however, that the court may permit a servicemember or veteran to
3 complete any court-approved counseling program administered or approved by the Veterans'
4 Administration. The sentencing judge or magistrate shall prohibit that person from operating a
5 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.

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

23 (ii) Every person convicted of a second violation within a ~~five-year (5)~~ ten (10) year
24 period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) or above,
25 by weight as shown by a chemical analysis of a blood, breath, or urine sample, or who is under
26 the influence of a drug, toluene, or any controlled substance as defined in subdivision (b)(1), shall
27 be subject to mandatory imprisonment of not less than six (6) months, nor more than one year; a
28 mandatory fine of not less than one thousand dollars (\$1,000); and a mandatory license
29 suspension for a period of two (2) years from the date of completion of the sentence imposed
30 under this subsection. The sentencing judge shall require alcohol or drug treatment for the
31 individual; provided, however, that the court may permit a servicemember or veteran to complete
32 any court approved counseling program administered or approved by the Veterans'
33 Administration. The sentencing judge or magistrate shall prohibit that person from operating a
34 motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8

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

17 (ii) Every person convicted of a third or subsequent violation within a ~~five-year (5)~~ ten
18 (10) year period whose blood alcohol concentration is fifteen hundredths of one percent (.15%)
19 above by weight as shown by a chemical analysis of a blood, breath, or urine sample, or who is
20 under the influence of a drug, toluene, or any controlled substance as defined in subdivision
21 (b)(1), shall be subject to mandatory imprisonment of not less than three (3) years, nor more than
22 five (5) years; a mandatory fine of not less than one thousand dollars (\$1,000), nor more than five
23 thousand dollars (\$5,000); and a mandatory license suspension for a period of three (3) years
24 from the date of completion of the sentence imposed under this subsection. The sentencing judge
25 shall require alcohol or drug treatment for the individual. The sentencing judge or magistrate shall
26 prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock
27 system as provided in § 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-year (5)~~ ten (10) year period, regardless of whether any prior
30 violation and subsequent conviction was a violation and subsequent conviction under this statute
31 or under the driving under the influence of liquor or drugs statute of any other state, shall be
32 subject, in the discretion of the sentencing judge, to having the vehicle owned and operated by the
33 violator seized and sold by the state of Rhode Island, with all funds obtained by the sale to be
34 transferred 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 § 31-27-
8 2(d)(4) shall not apply to an individual who has surrendered his or her license and served the
9 court-ordered period of suspension, but who, for any reason, has not had his or her license
10 reinstated after the period of suspension, revocation, or suspension has expired; provided, further,
11 the individual shall be subject to the provisions of §§ 31-27-2(d)(2)(i) or (ii) or 31-27-22(d)(3)(i),
12 (ii), or (iii) regarding subsequent offenses, and any other applicable provision of § 31-27-2.

13 (5) (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 § 31-27-
15 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
20 more than one year, and further, shall not be entitled to the benefit of suspension or deferment of
21 this 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 (6) (i) Any person convicted of a violation under this section shall pay a highway
24 assessment fine of five hundred dollars (\$500) that 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.

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

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

1 juvenile. The juvenile may also be required to pay a highway assessment fine of no more than
2 five hundred dollars (\$500) and the assessment imposed shall be deposited into the general fund.

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

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

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

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

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

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

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

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

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

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

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

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

34 (l) If any provision of this section, or the application of any provision, shall for any

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

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

9 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 -- DRIVING UNDER THE INFLUENCE
OF LIQUOR OR DRUGS

1 This act would extend the time period from five (5) years to ten (10) years for persons
2 convicted of driving under the influence of liquor or drugs as it relates to the penalties applicable
3 for first, second, and/or third convictions of this offense.

4 This act would take effect upon passage.

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