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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Senators Tassoni, Sosnowski, Doyle, and DeVall

Date Introduced: March 10, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 31-27-2.1 of the General Laws in Chapter 31-27 entitled "Motor
2 Vehicle Offenses" is hereby amended to read as follows:

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

15 (b) If a person for religious or medical reasons cannot be subjected to blood tests, the
16 person may file an affidavit with the division of motor vehicles stating the reasons why he or she
17 cannot be required to take blood tests, and a notation to this effect shall be made on his or her
18 license. If that person is asked to submit to chemical tests as provided under this chapter, the
19 person shall only be required to submit to chemical tests of his or her breath or urine. When a

1 person is requested to submit to blood tests, only a physician or registered nurse or a medical
2 technician certified under regulations promulgated by the director of the department of health
3 may withdraw blood for the purpose of determining the alcoholic content in it. This limitation
4 shall not apply to the taking of breath or urine specimens. The person tested shall be permitted to
5 have a physician of his or her own choosing and at his or her own expense administer chemical
6 tests of his or her breath, blood, and/or urine in addition to the tests administered at the direction
7 of a law enforcement officer. If a person having been placed under arrest refuses upon the request
8 of a law enforcement officer to submit to the tests, as provided in section 31-27-2, none shall be
9 given, but a judge of the traffic tribunal or district court judge, upon receipt of a report of a law
10 enforcement officer: that he or she had reasonable grounds to believe the arrested person had
11 been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene,
12 or any controlled substance, as defined in chapter 28 of title 21, or any combination of these; that
13 the person had been informed of his or her rights in accordance with section 31-27-3; that the
14 person had been informed of the penalties incurred as a result of noncompliance with this section;
15 and that the person had refused to submit to the tests upon the request of a law enforcement
16 officer; shall promptly order that the person's operator's license or privilege to operate a motor
17 vehicle in this state be immediately suspended and that the person's license be surrendered within
18 five (5) days of notice of suspension. A traffic tribunal judge or a district court judge pursuant to
19 the terms of subsection (c) of this section shall order as follows:

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

26 (2) Every person convicted for a second violation within a five (5) year period shall be
27 guilty of a misdemeanor, shall be imprisoned for not more than six (6) months and shall pay a
28 fine in the amount of six hundred dollars (\$600) to one thousand dollars (\$1,000), order the
29 person to perform sixty (60) to one hundred (100) hours of public community restitution, and the
30 person's driving license in this state shall be suspended for a period of one year to two (2) years.
31 The judge shall require alcohol and/or drug treatment for the individual. In addition, the
32 sentencing traffic tribunal or district court judge shall issue an order of probation. As a condition
33 of the probation order, in addition to any other condition of probation, the person subject to
34 probation shall be required to abstain from consuming substances containing alcohol and shall

1 wear a continuous alcohol monitoring device for the duration of the probation period; and shall be
2 subject to the following:

3 (i) The person subject to probation shall be responsible for paying all costs associated
4 with the monitoring, including installation; and

5 (ii) Tampering with or obstructing the continuous alcohol monitoring device shall
6 constitute noncompliance with the conditions of probation; and

7 (iii) A person subject to probation may apply to the court for a hardship exemption to the
8 requirement that the person pay all costs associated with the monitoring.

9 As used in this section, a "continuous alcohol monitoring device" means a device
10 approved by the traffic tribunal and/or district court that automatically tests breath, blood or
11 transdermal alcohol concentration levels once every hour and detects tampering attempts and
12 regularly transmits the monitoring data to an appropriate probation office. The "continuous
13 alcohol monitoring device" may be monitored by a private entity with prior approval of the traffic
14 tribunal and/or district court.

15 (3) Every person convicted for a third or subsequent violation within a five (5) year
16 period shall be guilty of a misdemeanor and shall be imprisoned for not more than one year, fined
17 eight hundred dollars (\$800) to one thousand dollars (\$1,000), order the person to perform not
18 less than one hundred (100) hours of public community restitution, and the person's operator's
19 license in this state shall be suspended for a period of two (2) years to five (5) years. The judge
20 shall require alcohol or drug treatment for the individual. Provided, that prior to the reinstatement
21 of a license to a person charged with a third or subsequent violation within a three (3) year period,
22 a hearing shall be held before a judge. At the hearing the judge shall review the person's driving
23 record, his or her employment history, family background, and any other pertinent factors that
24 would indicate that the person has demonstrated behavior which warrants the reinstatement of his
25 or her license. In addition, the sentencing traffic tribunal or district court judge shall issue an
26 order of probation. As a condition of the probation order, in addition to any other condition of
27 probation, the person subject to probation shall be required to abstain from consuming substances
28 containing alcohol and shall wear a continuous alcohol monitoring device for the duration of the
29 probation period; and shall be subject to the following:

30 (i) The person subject to probation shall be responsible for paying all costs associated
31 with the monitoring, including installation; and

32 (ii) Tampering with or obstructing the continuous alcohol monitoring device shall
33 constitute noncompliance with the conditions of probation; and

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1 requirement that the person pay all costs associated with the monitoring.

2 As used in this section, a “continuous alcohol monitoring device” means a device
3 approved by the traffic tribunal and/or district court that automatically tests breath, blood or
4 transdermal alcohol concentration levels once every hour and detects tampering attempts and
5 regularly transmits the monitoring data to an appropriate probation office. The "continuous
6 alcohol monitoring device" may be monitored by a private entity with prior approval of the traffic
7 tribunal and/or district court.

8 (4) For purposes of determining the period of license suspension, a prior violation shall
9 constitute any charge brought and sustained under the provisions of this section or section 31-27-
10 2.

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

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

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

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

1 shall then impose the penalties set forth in subsection (b) of this section. Action by the judge must
2 be taken within seven (7) days after the hearing, or it shall be presumed that the judge has refused
3 to issue his or her order of suspension.

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would impose a period of probation in specified instances of refusal to submit to
2 a chemical test, and enhanced conditions of probation, such as abstaining from alcohol and the
3 mandatory use of an alcohol monitoring device.

4 This act would take effect upon passage.

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