

2010 -- S 2636

LC01568

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

Introduced By: Senators Sosnowski, Maselli, Algieri, and McCaffrey

Date Introduced: March 04, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 31-27-2, 31-27-2.2 and 31-27-2.6 of the General Laws in Chapter
2 31-27 entitled "Motor Vehicle Offenses" are hereby amended to read as follows:

3 **31-27-2. Driving under influence of liquor or drugs.** -- (a) Whoever drives or
4 otherwise operates any vehicle in the state while under the influence of any intoxicating liquor,
5 drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any
6 combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3)
7 and shall be punished as provided in subsection (d) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

8 (ii) Every person convicted of a first violation whose blood alcohol 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.

28 (2) Every person convicted of a second violation within a five (5) year period with a
29 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than
30 fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or
31 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every
32 person convicted of a second violation within a five (5) year period regardless of whether the
33 prior violation and subsequent conviction was a violation and subsequent conviction under this
34 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 § 31-27-2.8.

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

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

31 (ii) Every person convicted of a third or subsequent violation within a five (5) year period
32 whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by weight
33 as shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence
34 of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be subject to

1 mandatory imprisonment of not less than three (3) years nor more than five (5) years, a
2 mandatory fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars
3 (\$5,000) and a mandatory license suspension for a period of three (3) years from the date of
4 completion of the sentence imposed under this subsection.

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

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

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 more
18 than one year and further shall not be entitled to the benefit of suspension or deferment of this
19 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.

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

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

27	FISCAL YEAR	FISCAL YEAR	FISCAL YEAR
28	1993-1995	1996-1999	2000-2010
29	\$147	\$173	\$86

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

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

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

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

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

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

25 (2) Persons convicted under the provisions of this chapter shall be required to attend a
26 special course on driving while intoxicated or under the influence of a controlled substance,
27 and/or participate in an alcohol or drug treatment program. The course shall take into
28 consideration any language barrier which may exist as to any person ordered to attend, and shall
29 provide for instruction reasonably calculated to communicate the purposes of the course in
30 accordance with the requirements of the subsection. Any costs reasonably incurred in connection
31 with the provision of this accommodation shall be borne by the person being retrained. A copy of
32 any violation under this section shall be forwarded by the court to the alcohol and drug safety
33 unit. In the event that persons convicted under the provisions of this chapter fail to attend and
34 complete the above course or treatment program, as ordered by the judge, then the person may be

1 brought before the court, and after a hearing as to why the order of the court was not followed,
2 may be sentenced to jail for a period not exceeding one year.

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

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

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

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

20 (j) An order to attend a special course on driving while intoxicated that shall be
21 administered in cooperation with a college or university accredited by the state, shall include a
22 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
23 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
24 the general fund.

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

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

32 **31-27-2.2. Driving under the influence of liquor or drugs, resulting in death.** -- (a)
33 When the death of any person other than the operator ensues as a proximate result of an injury
34 received by the operation of any vehicle, the operator of which is under the influence of any

1 intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of title 21, or
2 any combination of these, the person so operating the vehicle shall be guilty of "driving under the
3 influence of liquor or drugs, resulting in death".

4 (b) Any person charged with the commission of the offense set forth in subsection (a) of
5 this section shall, upon conviction, be punished ~~as follows:~~

6 ~~(1) (i) Every person convicted of a first violation shall be punished~~ by imprisonment in
7 the state prison for not less than five (5) years and for not more than ~~fifteen (15)~~ thirty (30) years,
8 in any unit of the adult correctional institutions in the discretion of the sentencing judge, by a fine
9 of not less than five thousand dollars (\$5,000) nor more than ~~ten thousand dollars (\$10,000)~~
10 twenty thousand dollars (\$20,000) and his or her license to operate a motor vehicle shall be
11 revoked for a period of five (5) years. The license privilege shall not be reinstated until evidence
12 satisfactory to the administrator of the division of motor vehicles establishes that no grounds exist
13 which would authorize the refusal to issue a license, and until the person gives proof of financial
14 responsibility ~~pursuant to chapter 32 of this title.~~

15 ~~(ii) (c)~~ (c) In addition, the person convicted may be required to successfully complete
16 alcohol or drug treatment in a program of their choice, at their own expense, as authorized by a
17 judge of the superior court, and may successfully complete the program before any license to
18 operate a motor vehicle is renewed.

19 ~~(2) Every person convicted of a second or subsequent violation within a five (5) year~~
20 ~~period in this state or any other state, provided the out of state conviction was based on the same~~
21 ~~blood alcohol concentration as set forth in section 31-27-2 shall be punished by imprisonment in~~
22 ~~the state prison for not less than ten (10) years and for not more than twenty (20) years, in any~~
23 ~~unit of the adult correctional institutions in the discretion of the sentencing judge, by a fine of not~~
24 ~~less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000) and his~~
25 ~~or her license to operate a motor vehicle shall be revoked for a period of five (5) years. In~~
26 ~~addition, the person convicted may be required to successfully complete alcohol or drug~~
27 ~~treatment, at their own expense, in a program established by the director of the department of~~
28 ~~corrections. The license privilege shall not be reinstated whether the convictions occurred in this~~
29 ~~or any other state until evidence satisfactory to the superior court, following a hearing establishes~~
30 ~~that no grounds exist which would authorize the refusal to issue a license, and until the person~~
31 ~~gives proof of financial responsibility pursuant to chapter 32 of this title.~~

32 **31-27-2.6. Driving under the influence of liquor or drugs, resulting in serious bodily**
33 **injury.** -- (a) When serious bodily injury of any person other than the operator is caused by the
34 operation of any motor vehicle, the operator of which is under the influence of any intoxicating

1 liquor, toluene, or any controlled substance as defined in chapter 28 of title 21 or any combination
2 of these, the person so operating the vehicle shall be guilty of driving under the influence of
3 liquor or drugs, resulting in serious bodily injury.

4 (b) As used in this section, "serious bodily injury" means physical injury that creates a
5 substantial risk of death or causes serious physical disfigurement or protracted loss or impairment
6 of the function of any bodily member or organ.

7 (c) Any person charged with the commission of the offense set forth in subsection (a) of
8 this section shall, upon conviction, be punished by imprisonment for not less than one year and
9 for not more than ~~ten (10)~~ twenty (20) years and by a fine of not less than one thousand dollars
10 (\$1,000) nor more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000). The
11 sentencing judge shall have the discretion to sentence the person to any unit of the adult
12 correctional institutions. The license of the person may be revoked for a period of up to two (2)
13 years. The license privilege shall not be reinstated until evidence satisfactory to the administrator
14 of the division of motor vehicles establishes that no grounds exist which would authorize refusal
15 to issue a license and until the person gives proof of financial responsibility pursuant to chapter
16 32 of this title. In addition, the person convicted may be required to successfully complete alcohol
17 or drug treatment, at their own expense, in a program established by the director of the
18 department of corrections.

19 ~~(d) For a second or subsequent conviction under this section within a five (5) year period,~~
20 ~~a person shall be punished by imprisonment for not less than two (2) years nor more than fifteen~~
21 ~~(15) years and by a fine of not less than three thousand dollars (\$3,000) nor more than ten~~
22 ~~thousand dollars (\$10,000). The sentencing judge shall have the discretion to sentence the person~~
23 ~~to any unit of the adult correctional institutions. In addition, the person convicted may be required~~
24 ~~to successfully complete alcohol or drug treatment, at their own expense, in a program established~~
25 ~~by the director of the department of corrections. The license of the person may be revoked for a~~
26 ~~period of up to four (4) years. The license privilege shall not thereafter be reinstated until~~
27 ~~evidence satisfactory to the administrator of the division of motor vehicles establishes that no~~
28 ~~grounds exist which would authorize refusal to issue a license and until the person gives proof of~~
29 ~~financial responsibility pursuant to chapter 32 of this title.~~

30 SECTION 2. Chapter 31-27 of the General Laws entitled "Motor Vehicle Offenses" is
31 hereby amended by adding thereto the following section:

32 **31-27-2.10. Driving under the influence of liquor or drugs, resulting in personal**
33 **injury. -- (a) When the personal injury of any person other than the operator is caused by the**
34 **operation of any motor vehicle, the operator of which is under the influence of any intoxicating**

1 liquor, toluene, or any controlled substance as defined in chapter 28 of title 21 or any combination
2 of these, the person so operating the vehicle shall be guilty of driving under the influence of
3 liquor or drugs, resulting in personal injury.

4 (b) Any person charged with a violation of this section shall, upon conviction, be
5 imprisoned for not more than two (2) years and have his or her license to operate a motor vehicle
6 suspended for not more than one year.

7 SECTION 3. This act shall take effect upon passage.

=====
LC01568
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO MOTOR AND OTHER VEHICLES -- MOTOR VEHICLE OFFENSES

1 This act would repeal the enhancement of penalties for subsequent offenses of driving
2 under the influence, death resulting and driving under the influence resulting in serious bodily
3 injury, and would replace the enhancement of penalties with an amended single range of penalties
4 that include longer sentences and higher fines. This act would also create a new criminal offense
5 of "driving under the influence resulting in personal injury." The act would make a defendant's
6 refusal to submit to a chemical test admissible in the underlying trial whether or not a defendant
7 elects to testify.

8 This act would take effect upon passage.

=====
LC01568
=====