

P.L. 2004, CHAPTER 80, *approved July 2, 2004*
Senate, No. 1511 (*Second Reprint*)

1 AN ACT concerning operating a vessel while under the influence ¹[of
2 alcohol]¹ and amending P.L.1952, c.157 and P.L.1986, c.39.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1952, c.157 (C:12:7-46) is amended to read as
8 follows:

9 3. a. No person shall operate a vessel on the waters of this State
10 while under the influence of intoxicating liquor, a narcotic,
11 hallucinogenic, or habit-producing drug or with a blood alcohol
12 concentration of ~~[0.10%]~~ 0.08% or more by weight of alcohol. No
13 person shall permit another who is under the influence of intoxicating
14 liquor, a narcotic, hallucinogenic or habit-producing drug, or who has
15 a blood alcohol concentration of ~~[0.10%]~~ 0.08% by weight of alcohol,
16 to operate any vessel owned by the person or in his custody or control.

17 As used in this section, "vessel" means a power vessel as defined by
18 section 2 of P.L.1995, c.401 (C.12:7-71) or a vessel which is 12 feet
19 or greater in length.

20 A person who violates this section shall be subject to the following:

21 (1) For a first offense:

22 (i) if the person's blood alcohol concentration is 0.08% or higher
23 but less than 0.10%, or the person operates a vessel while under the
24 influence of intoxicating liquor, or the person permits another person
25 who is under the influence of intoxicating liquor to operate a vessel
26 owned by him or in his custody or control or permits another person
27 with a blood alcohol concentration of 0.08% or higher but less than
28 0.10% to operate a vessel, to a fine of not less than \$250 nor more
29 than \$400; and to the revocation of the privilege to operate a vessel on
30 the waters of this State for a period of ~~[12 months]~~ one year from the
31 date of conviction and to the forfeiting of the privilege to operate a
32 motor vehicle over the highways of this State for a period of three
33 months;

34 (ii) if the person's blood alcohol concentration is 0.10% or higher,
35 or the person operates a vessel while under the influence of narcotic,
36 hallucinogenic or habit-producing drug, or the person permits another
37 person who is under the influence of narcotic, hallucinogenic or
38 habit-producing drug to operate a vessel owned by him or in his
39 custody or control, or permits another person with a blood alcohol

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted May 13, 2004.

² Assembly ALP committee amendments adopted May 27, 2004.

1 concentration of 0.10% or more to operate a vessel, to a fine of not
2 less than \$300 nor more than \$500; and to the revocation of the
3 privilege to operate a vessel on the waters of this State for a period of
4 one year from the date of conviction and to the forfeiting of the
5 privilege to operate a motor vehicle over the highways of this State for
6 a period of not less than seven months nor more than one year.

7 (2) For a second offense, to a fine of not less than \$500 nor more
8 than \$1,000; to the performance of community service for a period of
9 30 days, in the form and on the terms as the court deems appropriate
10 under the circumstances; and to imprisonment for a term of not less
11 than 48 hours nor more than 90 days, which shall not be suspended or
12 served on probation; and to the revocation of the privilege to operate
13 a vessel on the waters of this State for a period of two years after the
14 date of conviction and to the forfeiting of the privilege to operate a
15 motor vehicle over the highways of this State for a period of [six
16 months] two years.

17 (3) For a third or subsequent offense, to a fine of \$1,000; to
18 imprisonment for a term of not less than 180 days, except that the
19 court may lower this term for each day not exceeding 90 days during
20 which the person performs community service, in the form and on the
21 terms as the court deems appropriate under the circumstances; and to
22 the revocation of the privilege to operate a vessel on the waters of this
23 State for a period of 10 years from the date of conviction and to the
24 forfeiting of the privilege to operate a motor vehicle over the highways
25 of this State for a period of [two] 10 years.

26 Upon conviction of a violation of this section, the court shall collect
27 forthwith the New Jersey driver's license or licenses of the person so
28 convicted and forward such license or licenses to the [Director of the
29 Division of Motor Vehicles] Chief Administrator of the New Jersey
30 Motor Vehicle Commission. In the event that a person convicted
31 under this section is the holder of any out-of-State motor vehicle
32 driver's or vessel operator's license, the court shall not collect the
33 license but shall notify forthwith the [Director of the Division of
34 Motor Vehicles] Chief Administrator of the New Jersey Motor
35 Vehicle Commission, who shall, in turn, notify appropriate officials in
36 the licensing jurisdiction. The court shall, however, revoke the
37 nonresident's driving privilege to operate a motor vehicle and the
38 nonresident's privilege to operate a vessel in this State.

39 b. A person who has been convicted of a previous violation of this
40 section need not be charged as a second or subsequent offender in the
41 complaint made against him in order to render him liable to the
42 punishment imposed by this section against a second or subsequent
43 offender. If a second offense occurs more than 10 years after the first
44 offense, the court shall treat a second conviction as a first offense for
45 sentencing purposes and, if a third offense occurs more than 10 years
46 after the second offense, the court shall treat a third conviction as a

1 second offense for sentencing purposes.

2 c. If a court imposes a term of imprisonment under this section, the
3 person may be sentenced to the county jail, to the workhouse of the
4 county where the offense was committed, or to an inpatient
5 rehabilitation program approved by the [Director of the Division of
6 Motor Vehicles] Chief Administrator of the New Jersey Motor
7 Vehicle Commission and the Director of the Division of Alcoholism
8 and Drug Abuse in the Department of Health.

9 d. In the case of any person who at the time of the imposition of
10 sentence is less than 17 years of age, the period of the suspension of
11 driving privileges authorized herein, including a suspension of the
12 privilege of operating a motorized bicycle, shall commence on the day
13 the sentence is imposed and shall run for a period as fixed by the court
14 of not less than three months after the day the person reaches the age
15 of 17 years. If the driving or vessel operating privilege of any person
16 is under revocation, suspension, or postponement for a violation of
17 any provision of this title or Title 39 of the Revised Statutes at the
18 time of any conviction of any offense defined in this section, the
19 revocation, suspension, or postponement period imposed herein shall
20 commence as of the date of termination of the existing revocation,
21 suspension or postponement. A second offense shall result in the
22 suspension or postponement of the person's privilege to operate a
23 motor vehicle for six months. A third or subsequent offense shall
24 result in the suspension or postponement of the person's privilege to
25 operate a motor vehicle for two years. The court before whom any
26 person is convicted of or adjudicated delinquent for a violation shall
27 collect forthwith the New Jersey driver's license or licenses of the
28 person and forward such license or licenses to the [Director of the
29 Division of Motor Vehicles] Chief Administrator of the New Jersey
30 Motor Vehicle Commission along with a report indicating the first and
31 last day of the suspension or postponement period imposed by the
32 court pursuant to this section. If the court is for any reason unable to
33 collect the license or licenses of the person, the court shall cause a
34 report of the conviction or adjudication of delinquency to be filed with
35 the [director] chief administrator. That report shall include the
36 complete name, address, date of birth, eye color, and sex of the person
37 and shall indicate the first and last day of the suspension or
38 postponement period imposed by the court pursuant to this section.
39 The court shall inform the person orally and in writing that if the
40 person is convicted of personally operating a motor vehicle or a vessel
41 during the period of license suspension or postponement imposed
42 pursuant to this section, the person shall, upon conviction, be subject
43 to the penalties set forth in R.S.39:3-40 or section 14 of P.L.1995,
44 c.401 (C.12:7-83), whichever is appropriate. A person shall be
45 required to acknowledge receipt of the written notice in writing.
46 Failure to receive a written notice or failure to acknowledge in writing

1 the receipt of a written notice shall not be a defense to a subsequent
2 charge of a violation of R.S.39:3-40 or section 14 of P.L.1995, c.401
3 (C.12:7-83). If the person is the holder of a driver's or vessel
4 operator's license from another jurisdiction, the court shall not collect
5 the license but shall notify forthwith the ~~director~~ chief administrator
6 who shall notify the appropriate officials in the licensing jurisdiction.
7 The court shall, however, in accordance with the provisions of this
8 section, revoke the person's non-resident driving or vessel operating
9 privilege, whichever is appropriate, in this State.

10 e. In addition to any other requirements provided by law, a person
11 convicted under this section shall satisfy the screening, evaluation,
12 referral program and fee requirements of the Division of Alcoholism's
13 Intoxicated Driving Programs Unit. A fee of \$80 shall be payable to
14 the Alcohol Education, Rehabilitation and Enforcement Fund
15 established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the
16 convicted person in order to defray the costs of the screening,
17 evaluation and referral by the Intoxicated Driving Programs Unit.
18 Failure to satisfy this requirement shall result in the immediate
19 forfeiture of the privilege to operate a vessel on the waters of this
20 State or the continuation of revocation until the requirements are
21 satisfied.

22 f. In addition to any other requirements provided by law, a person
23 convicted under this section shall be required after conviction to
24 complete a boat safety course from the list approved by the
25 Superintendent of State Police pursuant to section 1 of P.L.1987,
26 c.453 (C.12:7-60), which shall be completed prior to the restoration
27 of the privilege to operate a vessel which may have been revoked or
28 suspended for a violation of the provisions of this section. Failure to
29 satisfy this requirement shall result in the immediate revocation of the
30 privilege to operate a vessel on the waters of this State, or the
31 continuation of revocation until the requirements of this subsection are
32 satisfied.

33 (cf: P.L.1995, c.401, s.37)

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35 2. Section 7 of P.L.1986, c.39 (C.12:7-55) is amended to read as
36 follows:

37 7. a. (1) A person who operates a power vessel or a vessel which
38 is 12 feet or greater in length on the waters of this State shall be
39 deemed to have given his consent to the taking of samples of his
40 breath for the purpose of making chemical tests to determine the
41 content of alcohol in his blood, except that the taking of samples shall
42 be made in accordance with the provisions of P.L.1986, c.39 and at
43 the request of ~~the State Marine Police Force~~ a member of the State
44 Police or a law enforcement officer who has reasonable grounds to
45 believe that the person has been operating a vessel in violation of the
46 provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

1 (2) Whenever an operator has been involved in an accident
2 resulting in death, bodily injury or property damage, an officer shall
3 consider that fact along with all other facts and circumstances in
4 determining under paragraph (1) of this subsection whether there are
5 reasonable grounds to believe a person is operating a vessel in
6 violation of the provisions of section 3 of P.L.1952, c.157
7 (C.12:7-46).

8 b. A record of the taking of the sample, disclosing the date and
9 time thereof, as well as the result of any chemical test, shall be made
10 and a copy shall be furnished or made available to the person so tested,
11 upon his request.

12 c. In addition to the samples taken and tests made at the direction
13 of **[the State Marine Police Force]** a member of the State Police or a
14 law enforcement officer, the person tested shall be permitted to have
15 samples taken and chemical tests of his breath, urine or blood made by
16 a person or physician of his own selection.

17 d. **[The State Marine Police Force]** A member of the State Police
18 or a law enforcement officer shall inform the person tested of his rights
19 under subsections b. and c. of this section.

20 e. No chemical test, as provided in this section, or specimen
21 necessary for a test, may be made or taken forcibly and against
22 physical resistance thereto by the defendant. **[The State Marine Police**
23 **Force]** A member of the State Police or a law enforcement officer
24 shall, however, inform the person arrested of the consequences of
25 refusing to submit to the test, in accordance with section 9 of
26 P.L.1986, c.39 (C.12:7-57). A standard statement, prepared by the
27 **[Director of the Division of Motor Vehicles in the Department of**
28 **Transportation,]** Chief Administrator of the New Jersey Motor
29 Vehicle Commission shall be read by **[the State Marine Police Force]**
30 a member of the State Police or a law enforcement officer to the
31 person under arrest.

32 (cf: P.L.1995, c.401, s.41)

33
34 3. Section 8 of P.L.1986, c.39 (C.12:7-56) is amended to read as
35 follows:

36 8. Chemical analyses of the arrested person's breath, to be
37 considered valid under the provisions of **[this amendatory and**
38 **supplementary act]** section 7 of P.L.1986, c.39 (C.12:7-55) shall have
39 been performed according to methods approved by the Attorney
40 General and by a person certified for this purpose by the Attorney
41 General. The Attorney General is authorized to approve satisfactory
42 techniques or methods, to ascertain the qualifications and competence
43 of individuals to conduct the analyses, and to make certifications of
44 the individuals. Certifications shall be subject to termination or
45 revocation at the discretion of the Attorney General. The Attorney

1 General shall prescribe a form for reports of the chemical analysis of
2 breath to be used by law enforcement officers and others acting in
3 accordance with the provisions of [this amendatory and supplementary
4 act] section 7 of P.L.1986, c.39 (C.12:7-55). The forms shall be
5 sequentially numbered. Each chief of police, in the case of forms
6 distributed to law enforcement officers and others in his municipality,
7 or the other officer, board, or official having charge or control of the
8 law enforcement department, where there is no chief, and the
9 [Director of the Division of Motor Vehicles] Chief Administrator of
10 the New Jersey Motor Vehicle Commission and the Superintendent of
11 State Police, in the case of forms distributed to law enforcement
12 officers and other personnel in their divisions, shall be responsible for
13 the furnishing and proper disposition of the forms. Each responsible
14 party shall prepare or have prepared records and reports relating to the
15 forms and their disposition, in the manner and at such times as the
16 Attorney General shall prescribe.

17 (cf: P.L.1986, c.39, s.8)

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19 4. Section 9 of P.L.1986, c.39 (C.12:7-57) is amended to read as
20 follows:

21 9. a. A court shall revoke the privilege of a person to operate a
22 power vessel or a vessel which is 12 feet or greater in length, if after
23 being arrested for a violation of section 3 of P.L.1952, c.157
24 (C.12:7-46), the person refuses to submit to the chemical test provided
25 for in section 7 of P.L.1986, c.39 (C.12:7-55) when requested to do
26 so. The revocation shall be for ~~[six months]~~ one year unless the
27 refusal was in connection with a second offense under section 3 of
28 P.L.1952, c.157 (C.12:7-46), in which case the revocation period shall
29 be for two years. If the refusal was in connection with a third or
30 subsequent offense under section 3 of P.L.1952, c.157 (C.12:7-46),
31 the revocation shall be for 10 years. The court also shall revoke the
32 privilege of a person to operate a motor vehicle over the highways of
33 this State for a period of: not less than seven months or more than
34 one year for a first offense; two years for a second offense; and 10
35 years for a third or subsequent offense. The court shall also fine a
36 person convicted under this section: not less than ~~[\$250,]~~ \$300 nor
37 more than \$500 for a first offense; not less than \$500 or more than
38 \$1,000 for a second offense; and \$1,000 for a third or subsequent
39 offense.

40 b. The court shall determine by a preponderance of the evidence
41 whether the arresting officer had probable cause to believe that the
42 person had been operating or was in actual physical control of the
43 vessel while under the influence of intoxicating liquor, or a narcotic,
44 hallucinogenic or habit-producing drug, whether the person was placed
45 under arrest, and whether the person refused to submit to the test
46 upon request of the officer. If these elements of the violation are not

1 established, no conviction shall issue.

2 c. In addition to any other requirements provided by law, a person
3 whose privilege to operate a vessel is revoked for refusing to submit
4 to a chemical test shall satisfy the screening, evaluation, referral and
5 program requirements of the Bureau of Alcohol Countermeasures in
6 the Division of Alcoholism in the Department of Health. A fee of \$40
7 shall be payable to the Alcohol Education, Rehabilitation and
8 Enforcement Fund established under section 3 of P.L.1983, c.531
9 (C.26:2B-32), by the convicted person in order to defray the costs of
10 the screening, evaluation and referral by the Bureau of Alcohol
11 Countermeasures and the cost of an education or rehabilitation
12 program. Failure to satisfy this requirement shall result in the
13 immediate revocation of the privilege to operate a vessel on the waters
14 of this State or the continuation of revocation until the requirements
15 are satisfied. The revocation for a first offense ²[shall] may² be
16 ²[independent of] concurrent with or consecutive to² a revocation
17 imposed ²[because of] for² a conviction under the provisions of
18 section 3 of P.L.1952, c.157 (C.12:7-46) ²arising out of the same
19 incident²; the revocation for a second or subsequent offense shall be
20 ²[concurrent with] consecutive to² a revocation imposed ²[because
21 of] for² a conviction under the provisions of section 3 of P.L.1952,
22 c.157 (C.12:7-46).

23 d. In addition to any other requirements provided by law, a person
24 convicted under this section shall be required after conviction to
25 complete a boat safety course from the list approved by the
26 Superintendent of State Police pursuant to section 1 of P.L.1987,
27 c.453 (C.12:7-60), which shall be completed prior to the restoration
28 of the privilege to operate a vessel which may have been revoked or
29 suspended for a violation of the provisions of this section. Failure to
30 satisfy this requirement shall result in the immediate revocation of the
31 privilege to operate a vessel on the waters of this State, or the
32 continuation of revocation until the requirements of this subsection are
33 satisfied.

34 (cf: P.L.1995, c.401, s.42)

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36 5. This act shall take effect immediately.

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41 _____
42 Reduces from 0.10% to 0.08% the blood alcohol content at which a
43 person is considered guilty of operating a boat while under the
influence.