

ASSEMBLY, No. 804

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Co-Sponsored by:

Assemblymen Prieto, Burzichelli and Moriarty

SYNOPSIS

Enhances penalties for driving when license revoked.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A804 ALBANO, QUIGLEY

2

1 AN ACT concerning the penalties for driving when license revoked
2 and amending R.S.39:3-40.

3

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

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7 1. R.S.39:3-40 is amended to read:

8 39:3-40. No person to whom a driver's license has been refused
9 or whose driver's license or reciprocity privilege has been
10 suspended or revoked, or who has been prohibited from obtaining a
11 driver's license, shall personally operate a motor vehicle during the
12 period of refusal, suspension, revocation, or prohibition.

13 No person whose motor vehicle registration has been revoked
14 shall operate or permit the operation of such motor vehicle during
15 the period of such revocation.

16 Except as provided in subsections i. and j. of this section, a
17 person violating this section shall be subject to the following
18 penalties:

19 a. Upon conviction for a first offense, a fine of **[\$500.00]** \$750
20 and, if that offense involves the operation of a motor vehicle during
21 a period when the violator's driver's license is suspended for a
22 violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-
23 50.4a), revocation of the violator's motor vehicle registration
24 privilege in accordance with the provisions of sections 2 through 6
25 of P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5) and
26 notwithstanding the provisions of N.J.S.2C:64-1, limiting forfeiture
27 to property used in the furtherance of unlawful activity or illegal
28 acts, forfeiture of the violator's motor vehicle in accordance with
29 the provisions governing the forfeiture of property set forth in
30 N.J.S.2C:64-3 through N.J.S.2C:64-7;

31 b. Upon conviction for a second offense, a fine of **[\$750.00]**
32 \$1,000, imprisonment in the county jail for not less than five days
33 or more than [five] 10 days and, if the second offense involves the
34 operation of a motor vehicle during a period when the violator's
35 driver's license is suspended and that second offense occurs within
36 five years of a conviction for that same offense, revocation of the
37 violator's motor vehicle registration privilege in accordance with
38 the provisions of sections 2 through 6 of P.L.1995, c.286 (C.39:3-
39 40.1 through C.39:3-40.5) and regardless of whether the second
40 offense occurs within five years of a conviction for the same
41 offense, if the offense involves the operation of a motor vehicle
42 during a period when the violator's driver's license is suspended for
43 a violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-
44 50.4a) and notwithstanding the provisions of N.J.S.2C:64-1,

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.

1 limiting forfeiture to property used in the furtherance of unlawful
2 activity or illegal acts, forfeiture of the violator's motor vehicle in
3 accordance with the provisions governing the forfeiture of property
4 set forth in N.J.S.2C:64-3 through N.J.S.2C:64-7;

5 c. Upon conviction for a third offense or subsequent offense, a
6 fine of **[\$1,000.00,] \$1,250** and imprisonment in the county jail for
7 **[10] 30** days. If the third or a subsequent offense involves the
8 operation of a motor vehicle during a period when the violator's
9 driver's license is suspended and the third or subsequent offense
10 occurs within five years of a conviction for the same offense,
11 revocation of the violator's motor vehicle registration privilege shall
12 be revoked in accordance with the provisions of sections 2 through
13 6 of P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5) and,
14 regardless of whether the third or subsequent offense occurs within
15 five years of a conviction for the same offense, if the offense
16 involves the operation of a motor vehicle during a period when the
17 violator's driver's license is suspended for a violation of R.S.39:4-
18 50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) and
19 notwithstanding the provisions of N.J.S.2C:64-1, limiting forfeiture
20 to property used in the furtherance of unlawful activity or illegal
21 acts, forfeiture of the violator's motor vehicle in accordance with
22 the provisions governing the forfeiture of property set forth in
23 N.J.S.2C:64-3 through N.J.S.2C:64-7;

24 d. Upon conviction, the court shall impose or extend a period
25 of suspension not **[to exceed] less than four months or more than**
26 **six months;**

27 e. Upon conviction, the court shall impose a period of
28 imprisonment for not less than 45 days or more than 180 days, if
29 while operating a vehicle in violation of this section a person is
30 involved in an accident resulting in bodily injury to another person;

31 f. (1) Notwithstanding subsections a. through e., any person
32 violating this section while under suspension issued pursuant to
33 section 2 of P.L.1972, c.197 (C.39:6B-2), upon conviction, shall be
34 fined \$500.00, shall have his license to operate a motor vehicle
35 suspended for an additional period of not less than one year nor
36 more than two years, and may be imprisoned in the county jail for
37 not more than 90 days.

38 (2) Notwithstanding the provisions of subsections a. through e.
39 of this section and paragraph (1) of this subsection, any person
40 violating this section under suspension issued pursuant to R.S.39:4-
41 50, section 2 of P.L.1981, c.512 (C.39:4-50.4a) or P.L.1982, c.85
42 (C.39:5-30a et seq.), shall be fined \$500, shall have his license to
43 operate a motor vehicle suspended for an additional period of not
44 less than one year or more than two years, and shall be imprisoned
45 in the county jail for not less than 10 days or more than 90 days.

46 (3) Notwithstanding the provisions of subsections a. through e.
47 of this section and paragraphs (1) and (2) of this subsection, a

1 person shall have his license to operate a motor vehicle suspended
2 for an additional period of not less than one year or more than two
3 years, which period shall commence upon the completion of any
4 prison sentence imposed upon that person, shall be fined \$500 and
5 shall be imprisoned for a period of 60 to 90 days for a first offense,
6 imprisoned for a period of 120 to 150 days for a second offense,
7 and imprisoned for 180 days for a third or subsequent offense, for
8 operating a motor vehicle while in violation of paragraph (2) of this
9 subsection while:

10 (a) on any school property used for school purposes which is
11 owned by or leased to any elementary or secondary school or school
12 board, or within 1,000 feet of such school property;

13 (b) driving through a school crossing as defined in R.S.39:1-1 if
14 the municipality, by ordinance or resolution, has designated the
15 school crossing as such; or

16 (c) driving through a school crossing as defined in R.S.39:1-1
17 knowing that juveniles are present if the municipality has not
18 designated the school crossing as such by ordinance or resolution.

19 A map or true copy of a map depicting the location and
20 boundaries of the area on or within 1,000 feet of any property used
21 for school purposes which is owned by or leased to any elementary
22 or secondary school or school board produced pursuant to section 1
23 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
24 subparagraph (a) of this paragraph.

25 It shall not be relevant to the imposition of sentence pursuant to
26 subparagraph (a) or (b) of this paragraph that the defendant was
27 unaware that the prohibited conduct took place while on or within
28 1,000 feet of any school property or while driving through a school
29 crossing. Nor shall it be relevant to the imposition of sentence that
30 no juveniles were present on the school property or crossing zone at
31 the time of the offense or that the school was not in session;

32 g. In addition to the other applicable penalties provided under
33 this section, a person violating this section whose license has been
34 suspended pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35) or
35 the regulations adopted thereunder, shall be fined \$3,000. The
36 court shall waive the fine upon proof that the person has paid the
37 total surcharge imposed pursuant to section 6 of P.L.1983, c.65
38 (C.17:29A-35) or the regulations adopted thereunder.
39 Notwithstanding the provisions of R.S.39:5-41, the fine imposed
40 pursuant to this subsection shall be collected by the Division of
41 Motor Vehicles pursuant to section 6 of P.L.1983, c.65 (C.17:29A-
42 35), and distributed as provided in that section, and the court shall
43 file a copy of the judgment of conviction with the director and with
44 the Clerk of the Superior Court who shall enter the following
45 information upon the record of docketed judgments: the name of the
46 person as judgment debtor; the Division of Motor Vehicles as
47 judgment creditor; the amount of the fine; and the date of the order.

1 These entries shall have the same force and effect as any civil
2 judgment docketed in the Superior Court;

3 h. A person who owns or leases a motor vehicle and permits
4 another to operate the motor vehicle commits a violation and is
5 subject to suspension of his license to operate a motor vehicle and
6 to revocation of registration pursuant to sections 2 through 6 of
7 P.L.1995, c.286 (C.39:3-40.1 through C.39:3-40.5) if the person:

8 (1) Knows that the operator's license to operate a motor vehicle
9 has been suspended for a violation of R.S.39:4-50 or section 2 of
10 P.L.1981, c.512 (C.39:4-50.4a); or

11 (2) Knows that the operator's license to operate a motor vehicle
12 is suspended and that the operator has been convicted, within the
13 past five years, of operating a vehicle while the person's license was
14 suspended or revoked;

15 i. If the violator's driver's license to operate a motor vehicle
16 has been suspended pursuant to section 9 of P.L.1985, c.14 (C.39:4-
17 139.10), the violator shall be subject to a maximum fine of \$100
18 upon proof that the violator has satisfied the parking ticket or
19 tickets that were the subject of the Order of Suspension;

20 j. If a person is convicted for a second or subsequent violation
21 of this section and the second or subsequent offense involves a
22 motor vehicle moving violation, the term of imprisonment for the
23 second or subsequent offense shall be 10 days longer than the term
24 of imprisonment imposed for the previous offense.

25 For the purposes of this subsection, a "motor vehicle moving
26 violation" means any violation of the motor vehicle laws of this
27 State for which motor vehicle points are assessed by the Director of
28 the Division of Motor Vehicles pursuant to section 1 of P.L.1982,
29 c.43 (C.39:5-30.5).

30 (cf: P.L.2002, c.28, s.1)

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32 2. This act shall take effect on the first day of the fourth month
33 following enactment.

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STATEMENT

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38 This bill enhances the penalties for persons who drive while their
39 licenses are revoked. If the violator's license revocation is based
40 upon a conviction for drunk driving or a refusal to consent to a
41 breathalyzer test, the bill provides for the forfeiture of the vehicle.

42 Under the provisions of the bill, the monetary penalties for
43 individuals who drive when their license is revoked are increased
44 from \$500 to \$750 for a first offense, from \$750 to \$1,000 for a
45 second offense, and from \$1,000 to \$1,250 for a third or subsequent
46 offense.

1 The bill also boosts the jail time for individuals convicted of
2 driving while their license is revoked. Currently, individuals
3 convicted of a second offense may be sentenced to up to five days
4 of imprisonment. This bill would require second time offenders to
5 spend at least five, but not more than 10 days in prison. Third time
6 and subsequent offenders would be required to spend 30 days in
7 jail. In its present form, the law requires these offenders to spend
8 10 days in jail.

9 In addition, the bill specifies that individuals convicted of
10 driving while their license is revoked are to have their license
11 revocation extended by at least four more months, but not more than
12 six months. The law currently provides for an extension of up to
13 six months.

14 Finally, the bill authorizes the forfeiture of a violator's motor
15 vehicle when the reason for that individual's license revocation was
16 drunk driving or refusing to consent to a breathalyzer test.

17 Under current State law, forfeiture actions are limited to
18 contraband and property used to further unlawful activity or illegal
19 acts. New Jersey courts have held that "unlawful activity" and
20 "illegal acts" include only indictable offenses. Since driving with a
21 revoked license is not an indictable offense, this bill would change
22 the law to allow forfeiture of a vehicle when persons whose license
23 have been revoked for drunk driving are convicted of driving during
24 the period of revocation.