

ASSEMBLY, No. 788

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywomen FARRAGHER and J. SMITH

1 AN ACT concerning certain spinal cord and head injured persons,
2 amending R.S.39:4-50, P.L.1981, c.512 and P.L.1983, c.531.

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.39:4-50 is amended to read as follows:

8 (a) A person who operates a motor vehicle while under the
9 influence of intoxicating liquor, narcotic, hallucinogenic or
10 habit-producing drug, or operates a motor vehicle with a blood alcohol
11 concentration of 0.10% or more by weight of alcohol in the
12 defendant's blood or permits another person who is under the influence
13 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug
14 to operate a motor vehicle owned by him or in his custody or control
15 or permits another to operate a motor vehicle with a blood alcohol
16 concentration of 0.10% or more by weight of alcohol in the
17 defendant's blood, shall be subject:

18 (1) For the first offense, to a fine of not less than \$250.00 nor
19 more than \$400.00 and a period of detainment of not less than 12
20 hours nor more than 48 hours spent during two consecutive days of
21 not less than six hours each day and served as prescribed by the
22 program requirements of the Intoxicated Driver Resource Centers
23 established under subsection (f) of this section and, in the discretion
24 of the court, a term of imprisonment of not more than 30 days and
25 shall forthwith forfeit his right to operate a motor vehicle over the
26 highways of this State for a period of not less than six months nor
27 more than one year.

28 (2) For a second violation, a person shall be subject to a fine of not
29 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
30 the court to perform community service for a period of 30 days, which
31 shall be of such form and on such terms as the court shall deem
32 appropriate under the circumstances, and shall be sentenced to

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

Matter underlined thus is new matter.

1 imprisonment for a term of not less than 48 consecutive hours, which
2 shall not be suspended or served on probation, nor more than 90 days,
3 and shall forfeit his right to operate a motor vehicle over the highways
4 of this State for a period of two years upon conviction, and, after the
5 expiration of said period, he may make application to the Director of
6 the Division of Motor Vehicles for a license to operate a motor
7 vehicle, which application may be granted at the discretion of the
8 director, consistent with subsection (b) of this section.

9 (3) For a third or subsequent violation, a person shall be subject to
10 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
11 of not less than 180 days, except that the court may lower such term
12 for each day, not exceeding 90 days, served performing community
13 service in such form and on such terms as the court shall deem
14 appropriate under the circumstances and shall thereafter forfeit his
15 right to operate a motor vehicle over the highways of this State for 10
16 years.

17 (4) For the first offense or any subsequent violation, the court shall
18 collect from the defendant a surcharge of \$25 in addition to any other
19 surcharge, fine or fee imposed on that defendant. The surcharge shall
20 be deposited in the Alcohol Education, Rehabilitation and Enforcement
21 Fund, established pursuant to section 3 of P.L.1983, c.531
22 (C.26:2B-32), to support the Spinal Cord and Head Injury Assistance
23 Program created under that section.

24 If the driving privilege of any person is under revocation or
25 suspension for a violation of any provision of this Title at the time of
26 any conviction for a violation of this section, the revocation or
27 suspension period imposed shall commence as of the date of
28 termination of the existing revocation or suspension period. A court
29 that imposes a term of imprisonment under this section may sentence
30 the person so convicted to the county jail, to the workhouse of the
31 county wherein the offense was committed, to an inpatient
32 rehabilitation program or to an Intoxicated Driver Resource Center or
33 other facility approved by the Director of the Division of Alcoholism
34 and Drug Abuse in the Department of Health; provided that for a third
35 or subsequent offense a person shall not serve a term of imprisonment
36 at an Intoxicated Driver Resource Center as provided in subsection (f).

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

46 (b) A person convicted under this section must satisfy the

1 screening, evaluation, referral, program and fee requirements of the
2 Division of [Alcoholism's] Alcoholism and Drug Abuse's Intoxicated
3 Driving Programs Unit, and of the Intoxicated Driver Resource
4 Centers and a program of alcohol education and highway safety, as
5 prescribed by the Director of the Division of Motor Vehicles. The
6 sentencing court shall inform the person convicted that failure to
7 satisfy such requirements shall result in a mandatory two day term of
8 imprisonment in a county jail and a driver license revocation or
9 suspension and continuation of revocation or suspension until such
10 requirements are satisfied, unless stayed by court order in accordance
11 with Rule 7:8-2 of the N.J. Court Rules, 1969, or R.S.39:5-22. Upon
12 sentencing, the court shall forward to the Bureau of Alcohol
13 Countermeasures within the Intoxicated Driving Programs Unit a copy
14 of a person's conviction record. A fee of \$80.00 shall be payable to
15 the Alcohol Education, Rehabilitation and Enforcement Fund
16 established pursuant to section 3, P.L.1983, c.531 (C.26: 2B-32) to
17 support the Intoxicated Driving Programs Unit.

18 (c) Upon conviction of a violation of this section, the court shall
19 collect forthwith the New Jersey driver's license or licenses of the
20 person so convicted and forward such license or licenses to the
21 Director of the Division of Motor Vehicles. The court shall inform the
22 person convicted that if he is convicted of personally operating a
23 motor vehicle during the period of license suspension imposed
24 pursuant to subsection (a) of this section, he shall, upon conviction, be
25 subject to the penalties established in R.S.39:3-40. The person
26 convicted shall be informed orally and in writing. A person shall be
27 required to acknowledge receipt of that written notice in writing.
28 Failure to receive a written notice or failure to acknowledge in writing
29 the receipt of a written notice shall not be a defense to a subsequent
30 charge of a violation of R.S.39:3-40. In the event that a person
31 convicted under this section is the holder of any out-of-state driver's
32 license, the court shall not collect the license but shall notify forthwith
33 the director, who shall, in turn, notify appropriate officials in the
34 licensing jurisdiction. The court shall, however, revoke the
35 nonresident's driving privilege to operate a motor vehicle in this State,
36 in accordance with this section. Upon conviction of a violation of this
37 section, the court shall notify the person convicted, orally and in
38 writing, of the penalties for a second, third or subsequent violation of
39 this section. A person shall be required to acknowledge receipt of that
40 written notice in writing. Failure to receive a written notice or failure
41 to acknowledge in writing the receipt of a written notice shall not be
42 a defense to a subsequent charge of a violation of this section.

43 (d) The Director of the Division of Motor Vehicles shall
44 promulgate rules and regulations pursuant to the "Administrative
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to
46 establish a program of alcohol education and highway safety, as

1 prescribed by this act.

2 (e) Any person accused of a violation of this section who is liable
3 to punishment imposed by this section as a second or subsequent
4 offender shall be entitled to the same rights of discovery as allowed
5 defendants pursuant to the Rules Governing Criminal Practice, as set
6 forth in the Rules Governing the Courts of the State of New Jersey.

7 (f) The counties, in cooperation with the Division of Alcoholism
8 and Drug Abuse and the Division of Motor Vehicles, but subject to the
9 approval of the Division of Alcoholism and Drug Abuse, shall
10 designate and establish on a county or regional basis Intoxicated
11 Driver Resource Centers. These centers shall have the capability of
12 serving as community treatment referral centers and as court monitors
13 of a person's compliance with the ordered treatment, service
14 alternative or community service. All centers established pursuant to
15 this subsection shall be administered by a certified alcoholism
16 counselor or other professional with a minimum of five years'
17 experience in treatment of alcoholism. All centers shall be required to
18 develop individualized treatment plans for all persons attending the
19 centers; provided that the duration of any ordered treatment or referral
20 shall not exceed one year. It shall be the center's responsibility to
21 establish networks with the community alcohol education, treatment
22 and rehabilitation resources and to receive monthly reports from the
23 referral agencies regarding a person's participation and compliance
24 with the program. Nothing in this subsection shall bar these centers
25 from developing their own education and treatment programs;
26 provided that they are approved by the Division of Alcoholism and
27 Drug Abuse.

28 Upon a person's failure to report to the initial screening or any
29 subsequent ordered referral, the Intoxicated Driver Resource Center
30 shall promptly notify the sentencing court of the person's failure to
31 comply.

32 Required detention periods at the Intoxicated Driver Resource
33 Centers shall be determined according to the individual treatment
34 classification assigned by the Bureau of Alcohol Countermeasures.
35 Upon attendance at an Intoxicated Driver Resource Center, a person
36 shall be assessed a per diem fee of \$50.00 for the first offender
37 program or a per diem fee of \$75.00 for the second offender program,
38 as appropriate.

39 The centers shall conduct a program of alcohol education and
40 highway safety, as prescribed by the Director of the Division of Motor
41 Vehicles.

42 The Director of the Division of Alcoholism and Drug Abuse shall
43 adopt rules and regulations pursuant to the "Administrative Procedure
44 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the
45 purposes of this subsection.

46 (cf: P.L.1986, c.126, s.1)

1 2. Section 2 of P.L.1981, c.512 (C.39:4-50.4a) is amended to read
2 as follows:

3 2. The municipal court shall revoke the right to operate a motor
4 vehicle of any operator who, after being arrested for a violation of
5 R.S. 39:4-50, shall refuse to submit to the chemical test provided for
6 in section 2 of P.L.1966, c.142 (C.39:4-50.2) when requested to do
7 so, for 6 months unless the refusal was in connection with a
8 subsequent offense under this section, in which case the revocation
9 period shall be for 2 years.

10 The municipal court shall determine by a preponderance of the
11 evidence whether the arresting officer had probable cause to believe
12 that the person had been driving or was in actual physical control of
13 a motor vehicle on the public highways or quasi-public areas of this
14 State while under the influence of intoxicating liquor or a narcotic,
15 hallucinogenic, or habit-producing drug or marihuana, whether the
16 person was placed under arrest, and whether he refused to submit to
17 the test upon request of the officer, and if these elements of the
18 violation are not established, no conviction shall issue. In addition to
19 any other requirements provided by law, a person whose operator's
20 license is revoked for refusing to submit to a chemical test shall satisfy
21 the requirements of a program of alcohol education or rehabilitation
22 pursuant to the provisions of R.S.39:4-50. The revocation shall be
23 independent of any revocation imposed by virtue of a conviction under
24 the provisions of R.S.39:4-50.

25 In addition to issuing a revocation, the municipal court shall fine
26 a person convicted under this section, a fine of not less than \$250.00
27 nor more than \$500.00.

28 For the first offense or any subsequent violation, the court shall
29 collect from the defendant a surcharge of \$25 in addition to any other
30 surcharge, fine or fee imposed on that defendant. The surcharge shall
31 be deposited in the Alcohol Education, Rehabilitation and Enforcement
32 Fund, established pursuant to section 3 of P.L.1983, c.531
33 (C.26:2B-32), to support the Spinal Cord and Head Injury Assistance
34 Program created under that section.

35 (cf: P.L.1981, c.537, s.2)

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37 3. Section 3 of P.L.1983, c.531 (C.26:2B-32) is amended to read
38 as follows:

39 3. a. An Alcohol Education, Rehabilitation and Enforcement Fund
40 is established as a nonlapsing, revolving fund in a separate account in
41 the Department of Health. The fund shall be credited from July 1,
42 1990 through June 30, 1991, with 27.6% of the tax revenues, and from
43 July 1, 1991 through June 30, 1992, with 53.3% of the tax revenues,
44 collected pursuant to section 3 of P.L.1980, c.62 (C.54:32C-3), the
45 amount thereof to be dedicated 75% to rehabilitation, 15% to
46 enforcement and 10% to education, and the fund thereafter shall be

1 annually credited with the amount of tax revenues collected from the
2 alcoholic beverage tax as is provided in section 2 of P.L.1990, c.41
3 (C.54:43-1.1), which amount shall be dedicated 75% to rehabilitation,
4 15% to enforcement and 10% to education. Interest received on
5 moneys in the fund shall be credited to the fund. Pursuant to the
6 formula set forth in section 5 of this act, moneys appropriated
7 pursuant to law shall only be distributed to the counties by the
8 Department of Health, without the assessment of administrative costs,
9 to develop and implement an annual comprehensive plan for the
10 treatment of alcoholics and drug abusers and for expenditures
11 according to the dedications provided herein.

12 b. (1) A separate account shall be established within the fund to
13 serve as repository for the surcharges collected pursuant to paragraph
14 (4) of subsection (a) of R.S.39:4-50 and section 2 of P.L.1981, c.512
15 (C.39:4-50.4a) to support a Spinal Cord and Head Injury Assistance
16 Program. These moneys shall be appropriated for the payment of the
17 cost of care for moderate or severe spinal cord or head injuries
18 suffered by a New Jersey resident as the result of a motor vehicle
19 accident for which a driver is convicted of a violation of R.S. 39:4-50
20 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), except that any person
21 convicted under these statutes for this accident shall not be eligible for
22 assistance.

23 (2) Payment may be provided for the cost of: acute care;
24 rehabilitation; equipment necessary for activities of daily living; and
25 transitional living which shall provide a person, in a residential setting,
26 with a time-limited, goal-oriented treatment program designed to
27 improve the person's physical and social functioning, as well as care
28 and supervision.

29 (3) Assistance shall not be provided to any person unless and until
30 all insurance benefits available for the care provided to that person
31 have been exhausted. To the extent of the assistance it has provided,
32 the program shall have first claim to any funds received by the
33 accident victim as the result of a settlement or other payment made in
34 connection with the accident.

35 (4) Pursuant to the "Administrative Procedure Act," P.L.1968,
36 c.410 (C.52:14B-1 et seq.) the Commissioner of Health shall establish
37 eligibility and payment standards and other regulations necessary for
38 implementation of the Spinal Cord and Head Injury Assistance
39 Program.

40 (cf: P.L.1990, c.41, s.4)

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42 4. This act shall take effect immediately but shall apply only to
43 offenses committed and injuries suffered after the effective date.

1 STATEMENT

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3 This bill assesses a surcharge of \$25, in addition to all other
4 penalties or fees against a person convicted of drunk or drugged
5 driving or of refusing to submit to a chemical test to determine blood
6 alcohol content. Surcharge revenues would be placed in the Alcohol
7 Education, Rehabilitation and Enforcement Fund to establish a Spinal
8 Cord and Head Injury Assistance Program. This program would pay
9 the costs of acute care, rehabilitation, transitional living and certain
10 equipment required by victims of drunk or drugged driving accidents
11 with spinal cord and head injuries. Payments would be made only after
12 all insurance benefits available to the victim had been exhausted and
13 would not be available to persons convicted of drunk driving.

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18 Imposes surcharge on drunk drivers to establish Spinal Cord and Head
19 Injury Assistance Fund.