

ASSEMBLY, No. 932

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KRAMER and Assemblywoman WRIGHT

1 AN ACT concerning penalties for driving while intoxicated and
2 amending R.S.39:4-50 and P.L.1981, c.512.

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 39:4-50. (a) A person who operates a motor vehicle while under
9 the 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 Whenever an operator of a motor vehicle has been involved in an
18 accident resulting in death, bodily injury or property damage, a police
19 officer shall consider that fact along with all other facts and
20 circumstances in determining whether there are reasonable grounds to
21 believe that person was operating a motor vehicle in violation of this
22 section.

23 A conviction or administrative determination for a violation of a
24 law of a substantially similar nature provided the person's blood
25 alcohol concentration was determined to be 0.10% or more in another
26 jurisdiction, whether or not it is a party to the Interstate Driver
27 License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall
28 constitute a prior conviction under this subsection.

29 If the driving privilege of any person is under revocation or
30 suspension for a violation of any provision of this Title or Title 2C of
31 the New Jersey Statutes at the time of any conviction for a violation
32 of this section, the revocation or suspension period imposed shall
33 commence as of the date of termination of the existing revocation or
34 suspension period. In the case of any person who at the time of the
35 imposition of sentence is less than 17 years of age, the forfeiture,
36 suspension or revocation of the driving privilege imposed by the court
37 under this section shall commence immediately, run through the
38 offender's seventeenth birthday and continue from that date for the
39 period set by the court pursuant to paragraphs (1) through (3) of this
40 subsection. A court that imposes a term of imprisonment under this
41 section may sentence the person so convicted to the county jail, to the
42 workhouse of the county wherein the offense was committed, to an
43 inpatient rehabilitation program or to an Intoxicated Driver Resource
44 Center or other facility approved by the [Director of the Division of
45 Alcoholism] chief of the Intoxicated Driving Program Unit in the
46 Department of Health; provided that for a third or subsequent offense

1 a person shall not serve a term of imprisonment at an Intoxicated
2 Driver Resource Center as provided in subsection (f).

3 A person who has been convicted of a previous violation of this
4 section need not be charged as a second or subsequent offender in the
5 complaint made against him in order to render him liable to the
6 punishment imposed by this section on a second or subsequent
7 offender, but if the second offense occurs more than 10 years after the
8 first offense, the court shall treat the second conviction as a first
9 offense for sentencing purposes and if a third offense occurs more than
10 10 years after the second offense, the court shall treat the third
11 conviction as a second offense for sentencing purposes.

12 (b) A person convicted under this section must satisfy the
13 screening, evaluation, referral, program and fee requirements of the
14 Division of ~~[Alcoholism's]~~ Alcoholism and Drug Abuse's Intoxicated
15 Driving ~~[Programs]~~ Program Unit, and of the Intoxicated Driver
16 Resource Centers and a program of alcohol and drug education and
17 highway safety, as prescribed by the Director of the Division of Motor
18 Vehicles. The sentencing court shall inform the person convicted that
19 failure to satisfy such requirements shall result in a mandatory two day
20 term of imprisonment in a county jail and a driver license revocation
21 or suspension and continuation of revocation or suspension until such
22 requirements are satisfied, unless stayed by court order in accordance
23 with Rule 7:8-2 of the ~~[N.J. Court Rules, 1969]~~ Rules Governing the
24 Courts of the State of New Jersey, or R.S.39:5-22. Upon sentencing,
25 the court shall forward to the ~~[Bureau of Alcohol Countermeasures~~
26 ~~within the]~~ Division of Alcoholism and Drug Abuse's Intoxicated
27 Driving ~~[Programs]~~ Program Unit a copy of a person's conviction
28 record. A fee of ~~[\$80.00]~~ \$100.00 shall be payable to the Alcohol
29 Education, Rehabilitation and Enforcement Fund established pursuant
30 to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
31 Intoxicated Driving ~~[Programs]~~ Program Unit.

32 (c) Upon conviction of a violation of this section, the court shall
33 collect forthwith the New Jersey driver's license or licenses of the
34 person so convicted and forward such license or licenses to the
35 Director of the Division of Motor Vehicles. The court shall inform the
36 person convicted that if he is convicted of personally operating a
37 motor vehicle during the period of license suspension imposed
38 pursuant to subsection (a) of this section, he shall, upon conviction, be
39 subject to the penalties established in R.S.39:3-40. The person
40 convicted shall be informed orally and in writing. A person shall be
41 required to acknowledge receipt of that written notice in writing.
42 Failure to receive a written notice or failure to acknowledge in writing
43 the receipt of a written notice shall not be a defense to a subsequent
44 charge of a violation of R.S.39:3-40. In the event that a person
45 convicted under this section is the holder of any out-of-State driver's
46 license, the court shall not collect the license but shall notify forthwith

1 the director, who shall, in turn, notify appropriate officials in the
2 licensing jurisdiction. The court shall, however, revoke the
3 nonresident's driving privilege to operate a motor vehicle in this State,
4 in accordance with this section. Upon conviction of a violation of this
5 section, the court shall notify the person convicted, orally and in
6 writing, of the penalties for a second, third or subsequent violation of
7 this section. A person shall be required to acknowledge receipt of that
8 written notice in writing. Failure to receive a written notice or failure
9 to acknowledge in writing the receipt of a written notice shall not be
10 a defense to a subsequent charge of a violation of this section.

11 (d) The Director of the Division of Motor Vehicles shall
12 promulgate rules and regulations pursuant to the "Administrative
13 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to
14 establish a program of alcohol and drug education and highway safety,
15 as prescribed by this act.

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

21 (f) The counties, in cooperation with the Division of Alcoholism
22 and Drug Abuse and the Division of Motor Vehicles, but subject to the
23 approval of the Division of Alcoholism and Drug Abuse, shall
24 designate and establish on a county or regional basis Intoxicated
25 Driver Resource Centers. These centers shall have the capability of
26 serving as community treatment referral centers and as court monitors
27 of a person's compliance with the ordered treatment, service
28 alternative or community service. All centers established pursuant to
29 this subsection shall be administered by a [certified alcoholism
30 counselor] counselor certified by the Alcohol and Drug Counselor
31 Certification Board of New Jersey or other professional with a
32 minimum of five years' experience in the treatment of alcoholism. All
33 centers shall be required to develop individualized treatment plans for
34 all persons attending the centers; provided that the duration of any
35 ordered treatment or referral shall not exceed one year. It shall be the
36 center's responsibility to establish networks with the community
37 alcohol and drug education, treatment and rehabilitation resources and
38 to receive monthly reports from the referral agencies regarding a
39 person's participation and compliance with the program. Nothing in
40 this subsection shall bar these centers from developing their own
41 education and treatment programs; provided that they are approved by
42 the Division of Alcoholism and Drug Abuse.

43 Upon a person's failure to report to the initial screening or any
44 subsequent ordered referral, the Intoxicated Driver Resource Center
45 shall promptly notify the sentencing court of the person's failure to
46 comply.

1 Required detention periods at the Intoxicated Driver Resource
2 Centers shall be determined according to the individual treatment
3 classification assigned by the [Bureau of Alcohol Countermeasures]
4 Intoxicated Driving Program Unit. Upon attendance at an Intoxicated
5 Driver Resource Center, a person shall be [assessed] required to pay
6 a per diem fee of [\\$50.00] \\$75.00 for the first offender program or a
7 per diem fee of [\\$75.00] \\$100.00 for the second offender program, as
8 appropriate. Any increases in the per diem fees after the first full year
9 shall be determined pursuant to rules and regulations adopted by the
10 Commissioner of Health in consultation with the Governor's Council
11 on Alcoholism and Drug Abuse pursuant to the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

13 The centers shall conduct a program of alcohol and drug education
14 and highway safety, as prescribed by the Director of the Division of
15 Motor Vehicles.

16 The [Director of the Division of Alcoholism] Commissioner of
17 Health shall adopt rules and regulations pursuant to the
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.), in order to effectuate the purposes of this subsection.

20 (cf: P.L.1995, c.234, s.1)

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

24 2. The municipal court shall revoke the right to operate a motor
25 vehicle of any operator who, after being arrested for a violation of
26 R.S.39:4-50, shall refuse to submit to a test provided for in section 2
27 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six
28 months unless the refusal was in connection with a second offense
29 under this section, in which case the revocation period shall be for two
30 years or unless the refusal was in connection with a third or
31 subsequent offense under this section in which case the revocation
32 shall be for ten years. A conviction or administrative determination for
33 a violation of a law of a substantially similar nature in another
34 jurisdiction, whether or not it is a party to the Interstate Driver
35 License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall
36 constitute a prior conviction under this section.

37 The municipal court shall determine by a preponderance of the
38 evidence whether the arresting officer had probable cause to believe
39 that the person had been driving or was in actual physical control of
40 a motor vehicle on the public highways or quasi-public areas of this
41 State while the person was under the influence of intoxicating liquor
42 or a narcotic, hallucinogenic, or habit-producing drug or marijuana;
43 whether the person was placed under arrest, if appropriate, and
44 whether he refused to submit to the test upon request of the officer;
45 and if these elements of the violation are not established, no conviction
46 shall issue. In addition to any other requirements provided by law, a

1 person whose operator's license is revoked for refusing to submit to a
2 test shall be referred to an Intoxicated Driver Resource Center
3 established by subsection (f.) of R.S.39:4-50 and shall satisfy the same
4 requirements of the center for refusal to submit to a test as provided
5 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with
6 a first, second, third or subsequent offense under this section that must
7 be satisfied by a person convicted of a commensurate violation of this
8 section, or be subject to the same penalties a such a person for failure
9 to do so. The revocation shall be independent of any revocation
10 imposed by virtue of a conviction under the provisions of R.S.39:4-50.

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

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

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16 3. This act shall take effect immediately.

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STATEMENT

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21 This bill clarifies how New Jersey courts are to treat a New Jersey
22 motorist's conviction in another state for driving while under the
23 influence (DWI).

24 Under the bill, the court is to count a New Jersey motorist's DWI
25 conviction in another state as a prior conviction if (1) the person's
26 blood alcohol concentration was determined to be .10% or greater,
27 and (2) the person is subsequently found guilty of a DWI violation
28 while operating a vehicle in this State. This provision will enable the
29 court to impose the enhanced penalties available under New Jersey
30 statutes on DWI violators who were previously convicted of operating
31 a vehicle while under the influence.

32 The bill also specifies that a motorist who refuses to submit to a
33 chemical test for a possible DWI violation in another state would be
34 subject to enhanced penalties if that individual subsequently refused to
35 submit to such a test in New Jersey.

36 The bill amends R.S.39:4-50 to specifically provide that a
37 conviction or administrative determination for a violation of a law of
38 a substantially similar nature where the person's blood alcohol
39 concentration was .10% or more in another jurisdiction, whether or
40 not it is a party to the Interstate Driver License Compact, pursuant to
41 P.L.1966, c.73 (C.39:5D-1 et seq.), would constitute a prior
42 conviction. This same language is added to section 2 of P.L.1981,
43 c.512 (C.39:4-50.4a) concerning refusal to submit to the chemical test
44 provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2).

45 The bill would codify case law and administrative regulations for
46 violations of this nature committed in states that have not become a

1 party to the "Interstate Driver License Compact." Some 35 states
2 belong to this compact under which they agree to share driver
3 violation information. Until now, this information has been added to
4 a motorist's home state record only if received from a state that is a
5 member of the compact.

6 The bill acknowledges the drug education component of the
7 Intoxicated Driver Resource Centers (IDRC), clarifies credentials
8 required for IDRC administrators, and updates references to the
9 Division of Alcoholism and Drug Abuse.

10 The bill also provides that the court would count a New Jersey
11 motorist's DWI conviction in another state as a prior conviction only
12 if the person's blood alcohol concentration (BAC) was determined to
13 be .10% or greater, which is the BAC level required for a conviction
14 under R.S.39:4-50. The bill also conforms R.S.39:4-50 (section 1 of
15 the bill) to the provisions of P.L.1995, c.134.

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21 Recognizes all out-of-state DWI convictions as prior convictions for
penalty computation purposes.