

[Second Reprint]  
**ASSEMBLY, No. 932**

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**STATE OF NEW JERSEY**

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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.

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

6

7       1. R.S.39:4-50 is amended to read as follows:

8           R.S.39:4-50. (a) A person who operates a motor vehicle while  
9   under 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

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ALP committee amendments adopted January 29, 1996.

<sup>2</sup> Assembly floor amendments adopted February 29, 1996.

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

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

18 Whenever an operator of a motor vehicle has been involved in an  
19 accident resulting in death, bodily injury or property damage, a police  
20 officer shall consider that fact along with all other facts and  
21 circumstances in determining whether there are reasonable grounds to  
22 believe that person was operating a motor vehicle in violation of this  
23 section.

24 A conviction or administrative determination for a violation of a  
25 law of a substantially similar nature <sup>1</sup>[provided the person's blood  
26 alcohol concentration was determined to be 0.10% or more in another  
27 jurisdiction.]<sup>1</sup> <sup>2</sup>in another jurisdiction<sup>2</sup> whether or not it is a party to  
28 the Interstate Driver License Compact pursuant to P.L.1966, c.73  
29 (C.39:5D-1 et seq.). shall constitute a prior conviction under this  
30 subsection. <sup>1</sup>For the purposes of this paragraph, "substantially similar"  
31 shall mean, in the case of a jurisdiction which uses blood alcohol  
32 concentration as a criterion for determining a violation, a blood  
33 alcohol concentration of 0.10% or more.<sup>1</sup> <sup>2</sup>Nothing in this paragraph  
34 shall be construed to authorize the director to suspend or revoke the  
35 driving privileges of any New Jersey licensee who has been found  
36 guilty of a substantially similar offense in another jurisdiction if that  
37 licensee has completed a period of suspension or revocation of his  
38 driving privileges imposed by that jurisdiction for that offense.<sup>2</sup>

39 If the driving privilege of any person is under revocation or  
40 suspension for a violation of any provision of this Title or Title 2C of  
41 the New Jersey Statutes at the time of any conviction for a violation  
42 of this section, the revocation or suspension period imposed shall  
43 commence as of the date of termination of the existing revocation or  
44 suspension period. In the case of any person who at the time of the  
45 imposition of sentence is less than 17 years of age, the forfeiture,  
46 suspension or revocation of the driving privilege imposed by the court

1 under this section shall commence immediately, run through the  
2 offender's seventeenth birthday and continue from that date for the  
3 period set by the court pursuant to paragraphs (1) through (3) of this  
4 subsection. A court that imposes a term of imprisonment under this  
5 section may sentence the person so convicted to the county jail, to the  
6 workhouse of the county wherein the offense was committed, to an  
7 inpatient rehabilitation program or to an Intoxicated Driver Resource  
8 Center or other facility approved by the chief of the Intoxicated  
9 Driving Program Unit in the Department of Health; provided that for  
10 a third or subsequent offense a person shall not serve a term of  
11 imprisonment at an Intoxicated Driver Resource Center as provided in  
12 subsection (f).

13       A person who has been convicted of a previous violation of this  
14 section need not be charged as a second or subsequent offender in the  
15 complaint made against him in order to render him liable to the  
16 punishment imposed by this section on a second or subsequent  
17 offender, but if the second offense occurs more than 10 years after the  
18 first offense, the court shall treat the second conviction as a first  
19 offense for sentencing purposes and if a third offense occurs more than  
20 10 years after the second offense, the court shall treat the third  
21 conviction as a second offense for sentencing purposes.

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

42       (c) Upon conviction of a violation of this section, the court shall  
43 collect forthwith the New Jersey driver's license or licenses of the  
44 person so convicted and forward such license or licenses to the  
45 Director of the Division of Motor Vehicles. The court shall inform the  
46 person convicted that if he is convicted of personally operating a

1   motor vehicle during the period of license suspension imposed  
2   pursuant to subsection (a) of this section, he shall, upon conviction, be  
3   subject to the penalties established in R.S.39:3-40. The person  
4   convicted shall be informed orally and in writing. A person shall be  
5   required to acknowledge receipt of that written notice in writing.  
6   Failure to receive a written notice or failure to acknowledge in writing  
7   the receipt of a written notice shall not be a defense to a subsequent  
8   charge of a violation of R.S.39:3-40. In the event that a person  
9   convicted under this section is the holder of any out-of-State driver's  
10   license, the court shall not collect the license but shall notify forthwith  
11   the director, who shall, in turn, notify appropriate officials in the  
12   licensing jurisdiction. The court shall, however, revoke the  
13   nonresident's driving privilege to operate a motor vehicle in this State,  
14   in accordance with this section. Upon conviction of a violation of this  
15   section, the court shall notify the person convicted, orally and in  
16   writing, of the penalties for a second, third or subsequent violation of  
17   this section. A person shall be required to acknowledge receipt of that  
18   written notice in writing. Failure to receive a written notice or failure  
19   to acknowledge in writing the receipt of a written notice shall not be  
20   a defense to a subsequent charge of a violation of this section.

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

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

31       (f) The counties, in cooperation with the Division of Alcoholism  
32   and Drug Abuse and the Division of Motor Vehicles, but subject to the  
33   approval of the Division of Alcoholism and Drug Abuse, shall  
34   designate and establish on a county or regional basis Intoxicated  
35   Driver Resource Centers. These centers shall have the capability of  
36   serving as community treatment referral centers and as court monitors  
37   of a person's compliance with the ordered treatment, service  
38   alternative or community service. All centers established pursuant to  
39   this subsection shall be administered by a [certified alcoholism  
40   counselor] counselor certified by the Alcohol and Drug Counselor  
41   Certification Board of New Jersey or other professional with a  
42   minimum of five years' experience in the treatment of alcoholism. All  
43   centers shall be required to develop individualized treatment plans for  
44   all persons attending the centers; provided that the duration of any  
45   ordered treatment or referral shall not exceed one year. It shall be the  
46   center's responsibility to establish networks with the community

1 alcohol and drug education, treatment and rehabilitation resources and  
2 to receive monthly reports from the referral agencies regarding a  
3 person's participation and compliance with the program. Nothing in  
4 this subsection shall bar these centers from developing their own  
5 education and treatment programs; provided that they are approved by  
6 the Division of Alcoholism and Drug Abuse.

7 Upon a person's failure to report to the initial screening or any  
8 subsequent ordered referral, the Intoxicated Driver Resource Center  
9 shall promptly notify the sentencing court of the person's failure to  
10 comply.

11 Required detention periods at the Intoxicated Driver Resource  
12 Centers shall be determined according to the individual treatment  
13 classification assigned by the [Bureau of Alcohol Countermeasures]  
14 Intoxicated Driving Program Unit. Upon attendance at an Intoxicated  
15 Driver Resource Center, a person shall be required to pay a per diem  
16 fee of \$75.00 for the first offender program or a per diem fee of  
17 \$100.00 for the second offender program, as appropriate. Any  
18 increases in the per diem fees after the first full year shall be  
19 determined pursuant to rules and regulations adopted by the  
20 Commissioner of Health in consultation with the Governor's Council  
21 on Alcoholism and Drug Abuse pursuant to the "Administrative  
22 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

23 The centers shall conduct a program of alcohol and drug education  
24 and highway safety, as prescribed by the Director of the Division of  
25 Motor Vehicles.

26 The Commissioner of Health shall adopt rules and regulations  
27 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
28 (C.52:14B-1 et seq.), in order to effectuate the purposes of this  
29 subsection.

30 (cf: P.L. 1995, c.243, s.1)

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

34 2. The municipal court shall revoke the right to operate a motor  
35 vehicle of any operator who, after being arrested for a violation of  
36 R.S.39:4-50, shall refuse to submit to a test provided for in section 2  
37 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six  
38 months unless the refusal was in connection with a second offense  
39 under this section, in which case the revocation period shall be for two  
40 years or unless the refusal was in connection with a third or  
41 subsequent offense under this section in which case the revocation  
42 shall be for ten years. A conviction or administrative determination for  
43 a violation of a law of a substantially similar nature in another  
44 jurisdiction, whether or not it is a party to the Interstate Driver  
45 License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall  
46 constitute a prior conviction under this section. <sup>2</sup>Nothing in this

1   paragraph shall be construed to authorize the director to suspend or  
2   revoke the driving privileges of any New Jersey licensee who has been  
3   found guilty of a substantially similar offense in another jurisdiction if  
4   that licensee has completed a period of suspension or revocation of his  
5   driving privileges imposed by that jurisdiction for that offense.<sup>2</sup>

6       The municipal court shall determine by a preponderance of the  
7   evidence whether the arresting officer had probable cause to believe  
8   that the person had been driving or was in actual physical control of  
9   a motor vehicle on the public highways or quasi-public areas of this  
10   State while the person was under the influence of intoxicating liquor  
11   or a narcotic, hallucinogenic, or habit-producing drug or marijuana;  
12   whether the person was placed under arrest, if appropriate, and  
13   whether he refused to submit to the test upon request of the officer;  
14   and if these elements of the violation are not established, no conviction  
15   shall issue. In addition to any other requirements provided by law, a  
16   person whose operator's license is revoked for refusing to submit to a  
17   test shall be referred to an Intoxicated Driver Resource Center  
18   established by subsection (f.) of R.S.39:4-50 and shall satisfy the same  
19   requirements of the center for refusal to submit to a test as provided  
20   for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with  
21   a first, second, third or subsequent offense under this section that must  
22   be satisfied by a person convicted of a commensurate violation of this  
23   section, or be subject to the same penalties a such a person for failure  
24   to do so. The revocation shall be independent of any revocation  
25   imposed by virtue of a conviction under the provisions of R.S.39:4-50.

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

29       (cf: P.L.1994, c.184, s.2)

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31       3. This act shall take effect immediately.

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