

[Third Reprint]
ASSEMBLY, No. 932

STATE OF NEW JERSEY

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 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

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:

¹ Assembly ALP committee amendments adopted January 29, 1996.

² Assembly floor amendments adopted February 29, 1996.

³ Assembly floor amendments adopted January 29, 1997.

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

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

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

25 A conviction³ [or administrative determination for a violation of a
26 law of a substantially similar nature ¹[provided the person's blood
27 alcohol concentration was determined to be 0.10% or more in another
28 jurisdiction,]¹ ²in another jurisdiction² whether or not it is a party to
29 the Interstate Driver License Compact pursuant to P.L.1966, c.73
30 (C.39:5D-1 et seq.), shall constitute a prior conviction under this
31 subsection. ¹For the purposes of this paragraph, "substantially similar"
32 shall mean, in the case of a jurisdiction which uses blood alcohol
33 concentration as a criterion for determining a violation, a blood
34 alcohol concentration of 0.10% or more.¹ ²Nothing in this paragraph
35 shall be construed to authorize the director to suspend or revoke the
36 driving privileges of any New Jersey licensee who has been found
37 guilty of a substantially similar offense in another jurisdiction if that
38 licensee has completed a period of suspension or revocation of his
39 driving privileges imposed by that jurisdiction for that offense.²] of a
40 violation of a law of a substantially similar nature in another
41 jurisdiction, regardless of whether that jurisdiction is a signatory to the
42 Interstate Driver License Compact pursuant to P.L.1966, c. 73
43 (C.39:5D-1 et seq.), shall constitute a prior conviction under this
44 subsection unless the defendant can demonstrate by clear and
45 convincing evidence that the conviction in the other jurisdiction was
46 based exclusively upon a violation of a proscribed blood alcohol

1 concentration of less than .10%.³

2 If the driving privilege of any person is under revocation or
3 suspension for a violation of any provision of this Title or Title 2C of
4 the New Jersey Statutes at the time of any conviction for a violation
5 of this section, the revocation or suspension period imposed shall
6 commence as of the date of termination of the existing revocation or
7 suspension period. In the case of any person who at the time of the
8 imposition of sentence is less than 17 years of age, the forfeiture,
9 suspension or revocation of the driving privilege imposed by the court
10 under this section shall commence immediately, run through the
11 offender's seventeenth birthday and continue from that date for the
12 period set by the court pursuant to paragraphs (1) through (3) of this
13 subsection. A court that imposes a term of imprisonment under this
14 section may sentence the person so convicted to the county jail, to the
15 workhouse of the county wherein the offense was committed, to an
16 inpatient rehabilitation program or to an Intoxicated Driver Resource
17 Center or other facility approved by the chief of the Intoxicated
18 Driving Program Unit in the Department of Health; provided that for
19 a third or subsequent offense a person shall not serve a term of
20 imprisonment at an Intoxicated Driver Resource Center as provided in
21 subsection (f).

22 A person who has been convicted of a previous violation of this
23 section need not be charged as a second or subsequent offender in the
24 complaint made against him in order to render him liable to the
25 punishment imposed by this section on a second or subsequent
26 offender, but if the second offense occurs more than 10 years after the
27 first offense, the court shall treat the second conviction as a first
28 offense for sentencing purposes and if a third offense occurs more than
29 10 years after the second offense, the court shall treat the third
30 conviction as a second offense for sentencing purposes.

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

1 payable to the Alcohol Education, Rehabilitation and Enforcement
2 Fund established pursuant to section 3 of P.L.1983, c.531
3 (C.26:2B-32) to support the Intoxicated Driving ~~[Programs]~~ Program
4 Unit.

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

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

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

40 (f) The counties, in cooperation with the Division of Alcoholism
41 and Drug Abuse and the Division of Motor Vehicles, but subject to the
42 approval of the Division of Alcoholism and Drug Abuse, shall
43 designate and establish on a county or regional basis Intoxicated
44 Driver Resource Centers. These centers shall have the capability of
45 serving as community treatment referral centers and as court monitors
46 of a person's compliance with the ordered treatment, service

1 alternative or community service. All centers established pursuant to
2 this subsection shall be administered by a [certified alcoholism
3 counselor] counselor certified by the Alcohol and Drug Counselor
4 Certification Board of New Jersey or other professional with a
5 minimum of five years' experience in the treatment of alcoholism. All
6 centers shall be required to develop individualized treatment plans for
7 all persons attending the centers; provided that the duration of any
8 ordered treatment or referral shall not exceed one year. It shall be the
9 center's responsibility to establish networks with the community
10 alcohol and drug education, treatment and rehabilitation resources and
11 to receive monthly reports from the referral agencies regarding a
12 person's participation and compliance with the program. Nothing in
13 this subsection shall bar these centers from developing their own
14 education and treatment programs; provided that they are approved by
15 the Division of Alcoholism and Drug Abuse.

16 Upon a person's failure to report to the initial screening or any
17 subsequent ordered referral, the Intoxicated Driver Resource Center
18 shall promptly notify the sentencing court of the person's failure to
19 comply.

20 Required detention periods at the Intoxicated Driver Resource
21 Centers shall be determined according to the individual treatment
22 classification assigned by the [Bureau of Alcohol Countermeasures]
23 Intoxicated Driving Program Unit. Upon attendance at an Intoxicated
24 Driver Resource Center, a person shall be required to pay a per diem
25 fee of \$75.00 for the first offender program or a per diem fee of
26 \$100.00 for the second offender program, as appropriate. Any
27 increases in the per diem fees after the first full year shall be
28 determined pursuant to rules and regulations adopted by the
29 Commissioner of Health in consultation with the Governor's Council
30 on Alcoholism and Drug Abuse pursuant to the "Administrative
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

32 The centers shall conduct a program of alcohol and drug education
33 and highway safety, as prescribed by the Director of the Division of
34 Motor Vehicles.

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

39 (cf: PL.1995, c.243, s.1)

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

43 2. The municipal court shall revoke the right to operate a motor
44 vehicle of any operator who, after being arrested for a violation of
45 R.S.39:4-50, shall refuse to submit to a test provided for in section 2
46 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six

1 months unless the refusal was in connection with a second offense
2 under this section, in which case the revocation period shall be for two
3 years or unless the refusal was in connection with a third or
4 subsequent offense under this section in which case the revocation
5 shall be for ten years. A conviction or administrative determination
6 ³[for] of ³ a violation of a law of a substantially similar nature in
7 another jurisdiction, ³regardless of ³ whether ³[or not it is a party]
8 that jurisdiction is a signatory³ to the Interstate Driver License
9 Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall
10 constitute a prior conviction under this section. ³[²Nothing in this
11 paragraph shall be construed to authorize the director to suspend or
12 revoke the driving privileges of any New Jersey licensee who has been
13 found guilty of a substantially similar offense in another jurisdiction if
14 that licensee has completed a period of suspension or revocation of his
15 driving privileges imposed by that jurisdiction for that offense.²]³

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

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

39 (cf: P.L.1994, c.184, s.2)

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41 3. This act shall take effect immediately.

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