

ASSEMBLY, No. 957

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen FELICE and ROMANO

1 AN ACT concerning the testing of drivers involved in certain accidents
2 for driving while under the influence of alcohol or drugs, amending
3 P.L.1966, c.142, P.L.1981, c.512 and P.L.1984, c.4.

4

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

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8 1. Section 2 of P.L.1966, c.142(C.39:4-50.2) is amended to read
9 as follows:

10 2. (a) Any person who operates a motor vehicle on any public
11 road, street or highway or quasi-public area in this State shall be
12 deemed to have given his consent to the taking of samples of his
13 breath for the purpose of making chemical tests to determine the
14 content of alcohol in his blood; provided, however, that the taking of
15 samples is made in accordance with the provisions of this act and at
16 the request of a police officer who has reasonable grounds to believe
17 that such person has been operating a motor vehicle in violation of the
18 provisions of R.S.39:4-50 or has been operating a motor vehicle which
19 was involved in an accident resulting in serious bodily injury or death
20 to any person. As used in this section, "serious bodily injury" means
21 bodily injury which creates a substantial risk of death or which causes
22 serious, permanent disfigurement, protracted loss or impairment of the
23 function of any bodily member or organ.

24 (b) A record of the taking of any such sample, disclosing the date
25 and time thereof, as well as the result of any chemical test, shall be
26 made and a copy thereof, upon his request, shall be furnished or made
27 available to the person so tested.

28 (c) In addition to the samples taken and tests made at the direction
29 of a police officer hereunder, the person tested shall be permitted to
30 have such samples taken and chemical tests of his breath, urine or
31 blood made by a person or physician of his own selection.

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 (d) The police officer shall inform the person tested of his rights
2 under subsections (b) and (c) of this section.

3 (e) No chemical test, as provided in this section, or specimen
4 necessary thereto, may be made or taken forcibly and against physical
5 resistance thereto by the defendant. The police officer shall, however,
6 inform the person arrested of the consequences of refusing to submit
7 to such test in accordance with section 2 of this amendatory and
8 supplementary act. A standard statement, prepared by the director,
9 shall be read by the police officer to the person under arrest.

10 (cf: P.L.1981, c.512, s.1)

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

14 2. The municipal court shall revoke the right to operate a motor
15 vehicle of any operator who, after being arrested for a violation of
16 R.S.39:4-50 or after being involved in an accident resulting in serious
17 bodily injury or death to any person, shall refuse to submit to [the
18 chemical] a test provided for in section 2 of P.L.1966,
19 c.142(C.39:4-50.2) when requested to do so, for six months unless the
20 refusal was in connection with a [subsequent] second offense under
21 [this section] R.S.39:4-50, in which case the revocation period shall
22 be for two years or unless the refusal was in connection with a third or
23 subsequent offense under R.S.39:4-50, in which case the revocation
24 shall be for 10 years.

25 The municipal court shall determine by a preponderance of the
26 evidence whether the arresting officer had probable cause to believe
27 that the person had been driving or was in actual physical control of
28 a motor vehicle on the public highways or quasi-public areas of this
29 State when an accident resulting in death or serious bodily injury
30 occurred or while the person was under the influence of intoxicating
31 liquor or a [narcotic, hallucinogenic, or habit-producing drug or
32 marihuana,]controlled dangerous substance; whether the person was
33 placed under arrest, if appropriate; and whether he refused to submit
34 to the test upon request of the officer[.]; and if these elements of the
35 violation are not established, no conviction shall issue. In addition to
36 any other requirements provided by law, a person whose operator's
37 license is revoked for refusing to submit to a [chemical] test shall be
38 referred to an Intoxicated Driver Resource Center established by
39 subsection (f) of R.S.39:4-50 and shall satisfy the same requirements
40 of [a program of alcohol education or rehabilitation pursuant to the
41 provisions of R.S.39:4-50] the center for refusal to submit to a test as
42 provided for in section 2 of P.L.1966, c.142(C.39:4-50.2) in
43 connection with a first, second, third or subsequent offense under
44 R.S.39:4-50 that must be satisfied by a person convicted of a
45 commensurate violation of R.S.39:4-50, or be subject to the same
46 penalties as such a person for failure to do so. The revocation shall be

1 independent of any revocation imposed by virtue of a conviction under
2 the provisions of R.S.39:4-50.

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

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

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8 3. Section 1 of P.L.1984, c.4(C.39:4-50.8) is amended to read as
9 follows:

10 1. Upon a conviction of a violation of R.S.39:4-50 or section 2 of
11 P.L.1981, c.512(C.39:4-50.4a), the court shall collect from the
12 defendant a surcharge of \$100.00 in addition to and independently of
13 any fine imposed on that defendant. The court shall forward the
14 surcharge to the Director of the Division of Motor Vehicles who shall
15 deposit \$95.00 of the surcharge into a "Drunk Driving Enforcement
16 Fund" (hereinafter referred to as the "fund"). This fund shall be used
17 to establish a Statewide drunk driving enforcement program to be
18 supervised by the director. The remaining \$5.00 of each surcharge
19 shall be deposited by the director into a separate fund for
20 administrative expenses.

21 A municipality shall be entitled to periodic grants from the "Drunk
22 Driving Enforcement Fund" in amounts representing its proportionate
23 contribution to the fund. A municipality shall be deemed to have
24 contributed to the fund the portion of the surcharge allocated to the
25 fund, collected pursuant to this section if the violation of R.S.39:4-50
26 or section 2 of P.L.1981, c.512(C.39:4-50.4a) occurred within the
27 municipality and the arrest resulting in conviction was made by the
28 member of a municipal police force. The grants from the fund shall be
29 used by the municipality to increase enforcement of R.S.39:4-50 by
30 subsidizing additional law enforcement patrols and through other
31 measures approved by the director. The Division of State Police,
32 interstate law enforcement agencies and county law enforcement
33 agencies shall be entitled to periodic grants from the fund in amounts
34 representing their proportionate contribution to the fund. The
35 Division of State Police or county or interstate law enforcement
36 agency shall be in deemed to have contributed to the fund the portion
37 of the surcharge allocated to the fund collected pursuant to this
38 section if the arrest resulting in a conviction was made by a member of
39 the Division of State Police or county or interstate law enforcement
40 agency. The grants from the fund shall be used by the Division of
41 State Police or county or interstate law enforcement agency to
42 increase enforcement of R.S.39:4-50 by subsidizing additional law
43 enforcement patrols and through other measures approved by the
44 director.

1 The surcharge described herein shall not be considered a fine,
2 penalty or forfeiture to be distributed pursuant to R.S.39:5-41.

3 The director shall promulgate rules and regulations in order to
4 effectuate the purposes of this section.

5 (cf: P.L.1984, c.4, s.1)

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7 4. This act shall take effect immediately.

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10 STATEMENT

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12 This bill permits a police officer at the scene of an accident resulting
13 in death or serious bodily injury to have the operator of any vehicle
14 involved in the accident tested for the presence of alcohol in the blood.

15 The bill also changes the penalties for refusing to submit to a test
16 to determine the presence of alcohol in the blood so that those
17 penalties more closely approximate the penalties for conviction of
18 driving while under the influence of intoxicating liquor or drugs
19 (R.S.39:4-50). The additional penalties established in the bill include
20 a license suspension of 10 years if the refusal was in connection with
21 a third or subsequent offense of driving while under the influence of
22 intoxicating liquor or drugs and a referral to an Intoxicated Driver
23 Resource Center.

24 Finally, the bill requires that persons who refuse to submit to a test
25 for the presence of alcohol in the blood pay \$100 into the "Drunk
26 Driving Enforcement Fund," established in section 1 of P.L.1984,
27 c.4(C.39:4-50.8).

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33 Permits police at accident involving a death or serious injury to test
driver for DWI.