

ASSEMBLY, No. 958

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 driving under the influence and amending
2 R.S.39:5-30.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.39:5-30 is amended to read as follows:

8 39:5-30. a. Every registration certificate, every license certificate,
9 every privilege to drive motor vehicles, including commercial motor
10 vehicles as defined in P.L.1990, c.103 (C.39:3-10.9 et al.), every
11 endorsement, class of license, and commercial driver license, may be
12 suspended or revoked, and any person may be prohibited from
13 obtaining a driver's license or a registration certificate, or disqualified
14 from obtaining any class of or endorsement on a commercial driver
15 license, and the reciprocity privilege of any nonresident may be
16 suspended or revoked by the director for a violation of any of the
17 provisions of this Title or on any other reasonable grounds, after due
18 notice in writing of such proposed suspension, revocation,
19 disqualification or prohibition and the ground thereof.

20 He may also summon witnesses to appear before him at his office
21 or at any other place he designates, to give testimony in a hearing
22 which he holds looking toward a revocation of a license or registration
23 certificate issued by or under his authority. The summons shall be
24 served at least five days before the return date, either by registered
25 mail or personal service. A person who fails to obey the summons shall
26 be subject to a penalty not exceeding \$100.00, to be recovered with
27 costs in an action at law, prosecuted by the Attorney General, and in
28 addition the vehicle registration or driver's license, or both, as the case
29 may be, shall forthwith be revoked. The fee for witnesses required to
30 attend before the director shall be \$1.00 for each day's attendance and
31 \$0.03 for every mile of travel by the nearest generally traveled route
32 in going to and from the place where the attendance of the witness is

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 required. These fees shall be paid when the witness is excused from
2 further attendance, and the disbursements made from payment of the
3 fees shall be audited and paid in the manner provided for expenses of
4 the department. The actual conduct of said hearing may be delegated
5 by the director to such departmental employees as he may designate,
6 in which case the said employees shall recommend to the director in
7 writing whether the said licenses or certificates shall or shall not be
8 suspended or revoked.

9 b. Whenever a matter is presented to the director involving an
10 alleged violation of

11 (1) R.S.39:4-98, where an excess of 20 miles per hour over the
12 authorized speed limit is alleged, and which has resulted in the death
13 of another;

14 (2) [R.S.39:4-50, and which has resulted in the death of
15 another;] Deleted by amendment, P.L. , c. ; (now pending before
16 the Legislature as this bill)

17 (3) R.S.39:4-96, and which has resulted in the death of another; or

18 (4) R.S.39:4-129, wherein the death of another has occurred, and
19 the director has not determined to immediately issue a preliminary
20 suspension pursuant to subsection e. of this section, the director shall
21 issue a notice of proposed final suspension or revocation of any license
22 certificate or any nonresident reciprocity privilege to operate any
23 motor vehicle or motorized bicycle held by the individual charged or
24 temporary order prohibiting the individual from obtaining any license
25 to operate any motor vehicle or motorized bicycle in this State.

26 In the notice, the director shall provide the individual charged with
27 an opportunity for a plenary hearing to contest the proposed final
28 suspension, revocation or other final agency action. Unless the
29 division receives, no later than the 10th day from the date the notice
30 was mailed, a written request for hearing, the proposed final agency
31 action shall take effect on the date specified in the notice.

32 Upon receipt of a timely request for a plenary hearing, a preliminary
33 hearing shall be held by an administrative law judge within 15 days of
34 the receipt of the request. The preliminary hearing shall be for the
35 purpose of determining whether, pending a plenary hearing on the
36 proposed final agency action, a preliminary suspension shall be
37 immediately issued by the judge. Adjournment of such hearing upon
38 motion by the individual charged shall be given only for good cause
39 shown.

40 At the preliminary hearing, the parties shall proceed on the papers
41 submitted to the judge, including the summons, the police reports and
42 the charged individual's prior driving record submitted by the division,
43 and any brief affidavits permitted by the judge from persons who shall
44 be witnesses at the plenary hearing, and the parties may present oral
45 argument. Based on the papers, on any oral argument, on the
46 individual's prior driving record, and on the circumstances of the

1 alleged violation presented in the papers, the judge shall determine
2 whether the individual was properly charged with a violation of the
3 law and a death occurred; and, if so, whether in the interest of public
4 safety, a preliminary suspension shall be immediately ordered pending
5 the plenary hearing on the proposed suspension or revocation. The
6 administrative law judge shall transmit his findings to the director.

7 A plenary hearing shall be held no later than the 45th day following
8 the preliminary hearing. Adjournment of the hearing shall be given
9 only for good cause shown. If the hearing is otherwise postponed or
10 delayed solely at the instance of the individual charged, the
11 administrative law judge shall immediately issue a preliminary
12 suspension of any license certificate or any nonresident reciprocity
13 privilege held by the individual charged, or if any such preliminary
14 suspension or order is in effect, he shall continue such suspension or
15 order. Such preliminary suspension or temporary order shall remain
16 in effect pending a final agency decision on the matter. If the hearing
17 is otherwise postponed or delayed at the instance of anyone other than
18 the individual charged, the judge shall immediately issue an order
19 restoring the individual's license certificate or any nonresident
20 reciprocity privilege pending final agency decision in the matter. The
21 period of any preliminary suspension imposed under this section shall
22 be deducted from any suspension imposed by the final agency decision
23 in the matter.

24 c. Whenever any other matter is presented to the director involving
25 an alleged violation of this title, wherein the death of another occurred
26 and for which he determines immediate action is warranted, he may
27 proceed in the manner prescribed in subsection b. above.

28 d. Whenever a fatal accident occurs in this State, an investigation
29 of the incident, whether performed by the State Police or by local
30 police, shall be completed and forwarded to the director within 72
31 hours of the time of the accident.

32 e. Whenever a matter is presented to the director involving an
33 alleged violation of

34 (1) R.S.39:4-98, where an excess of 20 miles per hour over the
35 authorized speed limit is alleged, and which has resulted in the death
36 or serious bodily injury of another;

37 (2) R.S.39:4-50, which has resulted in the death or serious bodily
38 injury of another;

39 (3) R.S.39:4-96 or R.S.39:4-97, which has resulted in the death or
40 serious bodily injury of another; or

41 (4) R.S.39:4-129, wherein the death or serious bodily injury of
42 another has occurred, the director for good cause may, without
43 hearing, immediately issue a preliminary suspension of any license
44 certificate or any nonresident reciprocity privilege to operate any
45 motor vehicle or motorized bicycle held by an individual charged or
46 temporary order prohibiting the individual from obtaining any license

1 to operate any motor vehicle or motorized bicycle in this State. In any
2 case involving an alleged violation of R.S.39:4-50 which has resulted
3 in the death or serious bodily injury of another, the director shall
4 immediately issue the preliminary suspension or temporary order. For
5 purposes of this subsection, "serious bodily injury" means bodily injury
6 which creates a substantial risk of death or which causes serious,
7 permanent disfigurement, or protracted loss or impairment of the
8 function of any bodily member or organ. Along with the notice of
9 preliminary suspension, the director shall issue a notice of proposed
10 final suspension, revocation or other final agency action, and shall
11 afford the individual the right to a preliminary hearing to contest the
12 preliminary suspension and a plenary hearing to contest the proposed
13 final agency action.

14 The preliminary suspension shall remain in effect pending a final
15 agency decision on the proposed final agency action, unless a request
16 for a preliminary hearing is received by the division no later than the
17 10th day from the date on which the notice was mailed. The proposed
18 final agency action shall take effect on the date specified in the notice
19 unless a request for a plenary hearing is received by the division no
20 later than the 10th day from the date on which the notice was mailed.

21 Upon timely request by the individual, a preliminary hearing shall
22 be held by an administrative law judge, no later than the 15th day from
23 the date on which the division receives the request. The preliminary
24 hearing shall be for the purpose of determining whether, pending a
25 final agency decision on the matter, the preliminary suspension issued
26 by the director shall remain in effect. Adjournment of the hearing shall
27 be given only for good cause shown. If the preliminary hearing is
28 otherwise postponed or delayed solely at the instance of someone
29 other than the individual charged, the judge shall immediately order
30 that the individual's license certificate or any nonresident reciprocity
31 privilege be restored pending the rescheduled preliminary hearing.

32 At the preliminary hearing, the parties shall proceed on the papers
33 submitted to the judge, including the summons, the police reports and
34 the charged individual's prior driving record submitted by the division,
35 and any brief affidavits permitted by the judge from persons who shall
36 be witnesses at the final hearing, and the parties may present oral
37 arguments. Based on the papers, on any oral argument, on the
38 individual's prior driving record, and on the circumstances of the
39 alleged violation presented in the papers, the judge shall immediately
40 determine whether the individual was properly charged with a violation
41 of the law and a death occurred; and, if so, whether in the interest of
42 public safety, the preliminary suspension shall be continued pending
43 the final agency decision on the matter. The administrative law judge
44 shall transmit his findings to the director.

45 Any plenary hearing to contest the proposed final agency action
46 shall conform to the requirements for a plenary hearing contained in

1 subsection b. of this section.

2 f. In addition to any other final agency action, the director shall
3 require any person whose privileges to operate a motor vehicle or
4 motorized bicycle are suspended or who has been prohibited from
5 obtaining a license, pursuant to this section, to be reexamined to
6 determine the person's ability to operate a motor vehicle or motorized
7 bicycle, prior to regaining or obtaining any driving privileges in this
8 State.

9 Any determination resulting from any preliminary or plenary hearing
10 held pursuant to subsection b., c., or e. of this section shall not be
11 admissible at any criminal or quasi-criminal proceedings on the alleged
12 violation or violations.

13 (cf: P.L.1990, c.103, s.33)

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15 2. This act shall take effect immediately.

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18 STATEMENT

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20 Under the provisions of this bill, the Director of the Division of
21 Motor Vehicles would be required to immediately issue a preliminary
22 suspension of a person's driver's license or nonresident reciprocity
23 privilege or to issue a temporary order prohibiting the person from
24 obtaining a driver's license if the person committed an alleged violation
25 of R.S.39:4-50 (driving under the influence) which resulted in the
26 death or serious bodily injury of another. Under current law, the
27 director may, for good cause and without a hearing, immediately issue
28 the preliminary suspension or temporary order for an alleged violation
29 of this section.

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35 Requires immediate suspension of license of drunk driver responsible
for death or serious bodily injury.