

ASSEMBLY, No. 1010

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen CONNORS and MORAN

1 AN ACT concerning the penalties for driving while under the influence,
2 and amending R.S.39:4-50, P.L.1984, c.4, P.L.1975, c.180, and
3 P.L.1983, c.65.

4

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

7

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

9 39:4-50. (a) A person who operates a motor vehicle while under
10 the influence of intoxicating liquor, narcotic, hallucinogenic or
11 habit-producing drug, or operates a motor vehicle with a blood alcohol
12 concentration of 0.10% or more by weight of alcohol in the
13 defendant's blood or permits another person who is under the influence
14 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug
15 to operate a motor vehicle owned by him or in his custody or control
16 or permits another to operate a motor vehicle with a blood alcohol
17 concentration of 0.10% or more by weight of alcohol in the
18 defendant's blood, shall be subject:

19 (1) For the first offense, to a fine of not less than ~~[\$250.00]~~ \$500
20 nor more than ~~[\$400.00]~~ \$800 and a period of detainment of not less
21 than 12 hours nor more than 48 hours spent during two consecutive
22 days of not less than six hours each day and served as prescribed by
23 the program requirements of the Intoxicated Driver Resource Centers
24 established under subsection (f) of this section and ~~[, in the discretion~~
25 ~~of the court,]a~~ term of imprisonment of ~~[not more than 30]~~ 60 days
26 and shall forthwith forfeit his right to operate a motor vehicle over the
27 highways of this State for a period of not less than ~~[six months]~~ one
28 year nor more than ~~[one year]~~ two years.

29 (2) For a second violation, a person shall be subject to a fine of not
30 less than ~~[\$500.00]~~ \$1,000 nor more than ~~[\$1,000.00]~~ \$2,000, and shall
31 be ordered by the court to perform community service for a period of
32 ~~[30]~~ 60 days, which shall be of such form and on such terms as the

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 court shall deem appropriate under the circumstances, and shall be
2 sentenced to imprisonment for a term of not less than [48 consecutive
3 hours, which shall not be suspended or served on probation,] 90 days
4 nor more than [90] 180 days, and shall forfeit his right to operate a
5 motor vehicle over the highways of this State for a period of [two]
6 four years upon conviction, and, after the expiration of said period, he
7 may make application to the Director of the Division of Motor
8 Vehicles for a license to operate a motor vehicle, which application
9 may be granted at the discretion of the director, consistent with
10 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] \$2,000, and shall be sentenced to imprisonment
13 for a term of not less than [180] 360 days[, except that the court may
14 lower such term for each day, not exceeding 90 days, served
15 performing community service in such form and on such terms as the
16 court shall deem appropriate under the circumstances] and shall
17 thereafter forfeit his right to operate a motor vehicle over the
18 highways of this State for [10] 20 years.

19 If the driving privilege of any person is under revocation or
20 suspension for a violation of any provision of this Title or Title 2C of
21 the New Jersey Statutes at the time of any conviction for a violation
22 of this section, the revocation or suspension period imposed shall
23 commence as of the date of termination of the existing revocation or
24 suspension period. In the case of any person who at the time of the
25 imposition of sentence is less than 17 years of age, the forfeiture,
26 suspension or revocation of the driving privilege imposed by the court
27 under this section shall commence immediately, run through the
28 offender's seventeenth birthday and continue from that date for the
29 period set by the court pursuant to paragraphs (1) through (3) of this
30 subsection. A court that imposes a term of imprisonment under this
31 section may sentence the person so convicted to the county jail, to the
32 workhouse of the county wherein the offense was committed, to an
33 inpatient rehabilitation program or to an Intoxicated Driver Resource
34 Center or other facility approved by the Director of the Division of
35 Alcoholism in the Department of Health; provided that for a third or
36 subsequent offense a person shall not serve a term of imprisonment at
37 an Intoxicated Driver Resource Center as provided in subsection (f).

38 A person who has been convicted of a previous violation of this
39 section need not be charged as a second or subsequent offender in the
40 complaint made against him in order to render him liable to the
41 punishment imposed by this section on a second or subsequent
42 offender, but if the second offense occurs more than 10 years after the
43 first offense, the court shall treat the second conviction as a first
44 offense for sentencing purposes and if a third offense occurs more than
45 10 years after the second offense, the court shall treat the third
46 conviction as a second offense for sentencing purposes.

1 (b) A person convicted under this section must satisfy the
2 screening, evaluation, referral, program and fee requirements of the
3 Division of Alcoholism's Intoxicated Driving Programs Unit, and of
4 the Intoxicated Driver Resource Centers and a program of alcohol
5 education and highway safety, as prescribed by the Director of the
6 Division of Motor Vehicles. The sentencing court shall inform the
7 person convicted that failure to satisfy such requirements shall result
8 in a mandatory two day term of imprisonment in a county jail and a
9 driver license revocation or suspension and continuation of revocation
10 or suspension until such requirements are satisfied, unless stayed by
11 court order in accordance with Rule 7:8-2 of the N.J. Court Rules,
12 1969, or R.S.39:5-22. Upon sentencing, the court shall forward to the
13 Bureau of Alcohol Countermeasures within the Intoxicated Driving
14 Programs Unit a copy of a person's conviction record. A fee
15 of~~[\$80.00]~~ \$160 shall be payable to the Alcohol Education,
16 Rehabilitation and Enforcement Fund established pursuant to section
17 3 of P.L.1983, c.531 (C.26:2B-32) to support the Intoxicated Driving
18 Programs Unit.

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

44 (d) The Director of the Division of Motor Vehicles shall
45 promulgate rules and regulations pursuant to the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to

1 establish a program of alcohol education and highway safety, as
2 prescribed by this act.

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

8 (f) The counties, in cooperation with the Division of Alcoholism
9 and the Division of Motor Vehicles, but subject to the approval of the
10 Division of Alcoholism, shall designate and establish on a county or
11 regional basis Intoxicated Driver Resource Centers. These centers
12 shall have the capability of serving as community treatment referral
13 centers and as court monitors of a person's compliance with the
14 ordered treatment, service alternative or community service. All
15 centers established pursuant to this subsection shall be administered by
16 a certified alcoholism counselor or other professional with a minimum
17 of five years' experience in treatment of alcoholism. All centers shall
18 be required to develop individualized treatment plans for all persons
19 attending the centers; provided that the duration of any ordered
20 treatment or referral shall not exceed one year. It shall be the center's
21 responsibility to establish networks with the community alcohol
22 education, treatment and rehabilitation resources and to receive
23 monthly reports from the referral agencies regarding a person's
24 participation and compliance with the program. Nothing in this
25 subsection shall bar these centers from developing their own education
26 and treatment programs; provided that they are approved by the
27 Division of Alcoholism.

28 Upon a person's failure to report to the initial screening or any
29 subsequent ordered referral, the Intoxicated Driver Resource Center
30 shall promptly notify the sentencing court of the person's failure to
31 comply.

32 Required detention periods at the Intoxicated Driver Resource
33 Centers shall be determined according to the individual treatment
34 classification assigned by the Bureau of Alcohol Countermeasures.
35 Upon attendance at an Intoxicated Driver Resource Center, a person
36 shall be assessed a per diem fee of~~[\$50.00]~~ \$100 for the first offender
37 program or a per diem fee of~~[\$75.00]~~ \$150 for the second offender
38 program, as appropriate.

39 The centers shall conduct a program of alcohol education and
40 highway safety, as prescribed by the Director of the Division of Motor
41 Vehicles.

42 The Director of the Division of Alcoholism shall adopt rules and
43 regulations pursuant to the "Administrative Procedure Act," P.L.1968,
44 c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this
45 subsection.

46 (cf: P.L.1993, c.296, s.6)

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

3 1. Upon a conviction of a violation of R.S.39:4-50, the court shall
4 collect from the defendant a surcharge of~~[\$100.00]~~ \$200 in addition
5 to and independent of any fine imposed on that defendant. The court
6 shall forward the surcharge to the Director of the Division of Motor
7 Vehicles who shall deposit~~[\$95.00]~~ \$190 of the surcharge into a
8 "Drunk Driving Enforcement Fund" (hereinafter referred to as the
9 "fund"). This fund shall be used to establish a Statewide drunk
10 driving enforcement program to be supervised by the director. The
11 remaining~~[\$5.00]~~ \$10 of each surcharge shall be deposited by the
12 director into a separate fund for administrative expenses.

13 A municipality shall be entitled to periodic grants from the "Drunk
14 Driving Enforcement Fund" in amounts representing its proportionate
15 contribution to the fund. A municipality shall be deemed to have
16 contributed to the fund the portion of the surcharge allocated to the
17 fund, collected pursuant to this section if the violation of R.S.39:4-50
18 occurred within the municipality and the arrest resulting in conviction
19 was made by the member of a municipal police force. The grants from
20 the fund shall be used by the municipality to increase enforcement of
21 R.S.39:4-50 by subsidizing additional law enforcement patrols and
22 through other measures approved by the director. The Division of
23 State Police, interstate law enforcement agencies and county law
24 enforcement agencies shall be entitled to periodic grants from the fund
25 in amounts representing their proportionate contribution to the fund.
26 The Division of State Police or county or interstate law enforcement
27 agency shall be deemed to have contributed to the fund the portion of
28 the surcharge allocated to the fund collected pursuant to this section
29 if the arrest resulting in a conviction was made by a member of the
30 Division of State Police or county or interstate law enforcement
31 agency. The grants from the fund shall be used by the Division of
32 State Police or county or interstate law enforcement agency to
33 increase enforcement of R.S.39:4-50 by subsidizing additional law
34 enforcement patrols and through other measures approved by the
35 director.

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

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

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

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42 3. Section 23 of P.L.1975, c.180 (C.39:3-10a) is amended to read
43 as follows:

44 23. The Director of Motor Vehicles may charge a fee of \$30.00 for
45 the restoration of any license which has been suspended or revoked by
46 reason of the licensee's violation of any of the provisions of Title 39

1 or any regulation adopted pursuant thereto; provided, however, that
2 in the case of a license which has been suspended for a violation of
3 R.S.39:4-50, the restoration fee shall be \$60. The director may
4 promulgate such regulations hereunder as he may deem necessary.
5 (cf: P.L.1982, c.53, s.1)

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7 4. Section 6 of P.L. 1983. c.65, s.6 (C.17:29A-35) is amended to
8 read as follows:

9 6. a. A merit rating accident surcharge system for private
10 passenger automobiles may be used in the voluntary market, by the
11 New Jersey Automobile Full Insurance Underwriting Association
12 created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), by the
13 Market Transition Facility created pursuant to section 88 of P.L.1990,
14 c.8 (C.17:33B-11), and by any insurance plan established to provide
15 private passenger automobile insurance pursuant to section 1 of
16 P.L.1970, c.215 (C.17:29D-1). No surcharges shall be imposed on or
17 after the operative date of this act, unless there is an at-fault accident
18 within a three-year period immediately preceding the effective date of
19 coverage which results in payment by the insurer of at least a \$300.00
20 claim. All moneys collected under this subsection shall be retained by
21 the insurer assessing the surcharge. Accident surcharges shall be
22 imposed for a three-year period and shall, for each filer, be uniform on
23 a Statewide basis without regard to classification or territory.

24 b. There is created a New Jersey Merit Rating Plan which shall
25 apply to all drivers and shall include, but not be limited to, the
26 following provisions:

27 (1)(a) Plan surcharges shall be levied, beginning on or after January
28 1, 1984, by the Division of Motor Vehicles on any driver who has
29 accumulated, within the immediately preceding three year period,
30 beginning on or after February 10, 1983, six or more motor vehicle
31 points, as provided in Title 39 of the Revised Statutes, exclusive of
32 any points for convictions for which surcharges are levied under
33 paragraph (2) of this subsection; except that the allowance for a
34 reduction of points in Title 39 of the Revised Statutes shall not apply
35 for the purpose of determining surcharges under this paragraph.
36 Surcharges shall be levied for each year in which the driver possesses
37 six or more points. Surcharges assessed pursuant to this paragraph
38 shall be not less than \$100.00 for six points, and not less than \$25.00
39 for each additional point. The commissioner may increase the amount
40 of surcharges as he deems necessary to effectuate the purposes of
41 P.L.1983, c.65 (C.17:29A-33 et al.), and may, pursuant to regulation,
42 permit the deferral of all or part of any surcharges authorized by this
43 subsection until the end of the policy term of an automobile insurance
44 policy with an effective date prior to January 1, 1984, upon
45 presentation of appropriate evidence that an insured has already paid
46 an equivalent surcharge arising from the same motor vehicle violation

1 or conviction.

2 (b) (Deleted by amendment, P.L.1984, c.1.)

3 (2) Plan surcharges shall be levied for convictions (a) under
4 R.S.39:4-50 for violations occurring on or after February 10, 1983,
5 and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for
6 offenses committed in other jurisdictions of a substantially similar
7 nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512
8 (C.39:4-50.4a), for violations occurring on or after January 26, 1984.
9 Surcharges under this paragraph shall be levied annually for a three
10 year period, and shall be not less than~~[\$1,000.00]~~ \$2,000 per year for
11 each of the first two convictions, and not less than~~[\$1,500.00]~~ \$3,000
12 per year for the third conviction occurring within a three year period.
13 If a driver is convicted under both R.S.39:4-50 and section 2 of
14 P.L.1981, c.512 (C.39:4-50.4a) for offenses arising out of the same
15 incident, the driver shall be assessed only one surcharge for the two
16 offenses. The commissioner may increase the amount of surcharges
17 as he deems necessary to effectuate the purposes of P.L.1983, c.65
18 (C.17:29A-33 et al.), and may, pursuant to regulation, permit the
19 deferral of all or any part of these surcharges as provided in paragraph
20 (1)(a) of this subsection.

21 If, upon written notification from the Division of Motor Vehicles,
22 mailed to the last address of record with the division, a driver fails to
23 pay a surcharge levied under this subsection, the license of the driver
24 shall be suspended forthwith until the surcharge is paid to the Division
25 of Motor Vehicles; except that upon satisfactory showing of indigency,
26 the Division of Motor Vehicles may authorize payment of the
27 surcharge on an installment basis over a period not to exceed 10
28 months.

29 For the purposes of this subparagraph, "indigency" shall be defined
30 in rules and regulations promulgated by the Director of the Division
31 of Motor Vehicles.

32 All moneys collectible under this subsection shall be billed and
33 collected by the Division of Motor Vehicles. Of the moneys collected:
34 10%, or the actual cost of administering the collection of the
35 surcharge, whichever is less, shall be retained by the Division of
36 Motor Vehicles; five percent, or the actual cost of administering the
37 cancellation notification system established pursuant to section 50 of
38 P.L.1990, c.8 (C.17:33B-41), whichever is less, shall be retained by
39 the Division of Motor Vehicles; and prior to October 1, 1991, the
40 remainder shall be remitted to the New Jersey Automobile Full
41 Insurance Underwriting Association and on or after October 1, 1991,
42 the remainder shall be remitted to the New Jersey Automobile
43 Insurance Guaranty Fund created pursuant to section 23 of P.L.1990,
44 c.8 (C.17:33B-5). From the date of certification by the Commissioner
45 of Insurance that the monies collectible under this subsection are no
46 longer needed to fund the association debt, monies collectible under

1 this subsection shall be remitted to the New Jersey Property-Liability
2 Guaranty Association created pursuant to section 6 of P.L.1974, c.17
3 (C.17:30A-6) to be used for payment of any loans made by that
4 association to the New Jersey Automobile Insurance Guaranty Fund
5 pursuant to paragraph (10) of subsection a. of section 8 of P.L.1974,
6 c.17 (C.17:30A-8).

7 (3) In addition to any other authority provided in P.L.1983, c.65
8 (C.17:29A-33 et al.), the commissioner, after consultation with the
9 Director of the Division of Motor Vehicles, is specifically authorized
10 (a) to increase the dollar amount of the surcharges for motor vehicle
11 violations or convictions, (b) to impose, in accordance with paragraph
12 (1)(a) of this subsection, surcharges for motor vehicle violations or
13 convictions for which motor vehicle points are not assessed under
14 Title 39 of the Revised Statutes, or (c) to reduce the number of points
15 for which surcharges may be assessed below the level provided in
16 paragraph (1)(a) of this subsection, except that the dollar amount of
17 all surcharges levied under the New Jersey Merit Rating Plan shall be
18 uniform on a Statewide basis for each filer, without regard to
19 classification or territory. Surcharges adopted by the commissioner on
20 or after January 1, 1984 for motor vehicle violations or convictions for
21 which motor vehicle points are not assessable under Title 39 of the
22 Revised Statutes shall not be retroactively applied but shall take effect
23 on the date of the New Jersey Register in which notice of adoption
24 appears or the effective date set forth in that notice, whichever is later.

25 c. No motor vehicle violation surcharges shall be levied on an
26 automobile insurance policy issued or renewed on or after January 1,
27 1984, except in accordance with the New Jersey Merit Rating Plan,
28 and all surcharges levied thereunder shall be assessed, collected and
29 distributed in accordance with subsection b. of this section.

30 d. (Deleted by amendment, P.L.1990, c.8.)

31 e. The Commissioner of Insurance and the Director of the Division
32 of Motor Vehicles as may be appropriate, shall adopt any rules and
33 regulations necessary or appropriate to effectuate the purposes of this
34 section.

35 (cf: P.L.1990, c.8, s.35)

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37 5. This act shall take effect immediately.

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STATEMENT

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42 This bill doubles the current penalties for operating a motor vehicle
43 while under the influence (DUI). The bill also provides for mandatory
44 incarceration of DUI violators, eliminating the discretion currently
45 afforded the court.

46 Under this bill, first time violators would be subject to fines of not

1 less than \$500 or more than \$800, license suspensions of one to two
2 years, and mandatory 60 day jail sentences.

3 For a second violation, individuals would be subject to fines of not
4 less than \$1,000 or more than \$2,000, a license suspension of four
5 years, 60 days of community service, and a mandatory 90 day jail
6 sentence.

7 Third time violators would be subject to a fine of \$2,000, a 20 year
8 licenses suspension, and a mandatory 360 day jail sentence.

9 In addition, violators would be subject to higher fees and
10 surcharges. For example, they would have to pay \$200 to the Drunk
11 Driving Enforcement Fund and a \$160 fee to the Bureau of Alcohol
12 Countermeasures. First time violators would be charged a fee of \$100
13 per day for the Intoxicated Driver Resource Center; for a second, and
14 any subsequent, violation, the fee would be \$150 per day. The
15 automobile insurance surcharge for a first time and second time
16 violator would increase to \$2,000 per year. A person guilty of a third
17 violation would have to pay an insurance surcharge of \$3,000 per year.
18 The driver's license restoration fee for all DUI violators would double
19 from \$30 to \$60.

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24 _____
Increases penalties for driving while under the influence.