

ASSEMBLY, No. 1352

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman STUHLTRAGER

1 AN ACT concerning the operation of motor vehicles by persons under
2 the influence of liquor or drugs, and amending R.S.39:4-50.

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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 39:4-50. (a) A person who operates a motor vehicle while under
9 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
32 appropriate under the circumstances, and shall be sentenced to

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

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

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

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

42 A person who has been convicted of a previous violation of this
43 section need not be charged as a second or subsequent offender in the
44 complaint made against him in order to render him liable to the
45 punishment imposed by this section on a second or subsequent
46 offender, but if the second offense occurs more than 10 years after the

1 first offense, the court shall treat the second conviction as a first
2 offense for sentencing purposes and if a third offense occurs more than
3 10 years after the second offense, the court shall treat the third
4 conviction as a second offense for sentencing purposes.

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

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

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

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

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

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

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

42 The centers shall conduct a program of alcohol education and
43 highway safety, as prescribed by the Director of the Division of Motor
44 Vehicles.

45 The Director of the Division of Alcoholism shall adopt rules and
46 regulations pursuant to the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this
2 subsection.

3 (g) Upon a conviction of a violation of this section, the court shall
4 collect pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) from
5 the defendant and forward to the State Treasurer a 5% surcharge on
6 any fine imposed on that defendant. The State Treasurer shall deposit
7 the 5% fine surcharge in a "Drunk Driver's Victims Indemnification
8 Fund" which is to be administered by the Violent Crimes
9 Compensation Board in satisfying claims and for related administrative
10 costs filed in accordance with the provisions of the "Criminal Injuries
11 Compensation Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.).
12 (cf: P.L.1994, c.184, s.1)

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14 2. This act shall take effect immediately.

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STATEMENT

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19 This bill provides that upon a conviction of a violation of
20 R.S.39:4-50, the court shall collect pursuant to section 2 of P.L.1979,
21 c.396 (C.2C:43-3.1) from the defendant and forward to the State
22 Treasurer a 5% surcharge on any fine imposed on that defendant. The
23 State Treasurer shall deposit the 5% fine surcharge in a "Drunk
24 Driver's Victims Indemnification Fund" which is to be administered by
25 the Violent Crimes Compensation Board in satisfying claims and for
26 related administrative costs filed in accordance with the provisions of
27 the "Criminal Injuries Compensation Act of 1971," P.L.1971, c.317
28 (C.52:4B-1 et seq.).

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33 Imposes 5% surcharge on fines imposed on persons convicted of
34 drunk driving; creates "Drunk Driver's Victims Indemnification Fund."