

SENATE, No. 1693

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 18, 1996

By Senator BASSANO

1 AN ACT concerning testing certain persons for the usage of controlled  
2 dangerous substances and intoxicating liquor and amending  
3 R.S.39:4-50 and supplementing chapter 4 of Title 39 of the Revised  
4 Statutes.

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

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9 1. As used in this act:

10 "Controlled dangerous substance" shall have the same meaning as  
11 the term is defined in N.J.S.2C:35-2.

12 "Director" means the Director of the Division of Motor Vehicles in  
13 the Department of Transportation.

14 "Offender" means a person who has been convicted of a violation  
15 of R.S.39:4-50.

16

17 2. (New section) a. The director shall enter into a contract with  
18 a person, entity or corporation to conduct random testing of offenders  
19 for usage of intoxicating liquor and controlled dangerous substances.  
20 The director, in consultation with the Department of Health, shall  
21 develop guidelines for such testing. All offenders shall be subject to  
22 random testing for the periods set forth in R.S.39:4-50. If an offender  
23 refuses to be tested, the director shall not reinstate that offender's  
24 driver's license until the expiration of the required period of testing.  
25 The cost of the testing shall be borne by the offender.

26 b. Any test results indicating usage of a controlled dangerous  
27 substance or a blood alcohol concentration of 0.10% or more by  
28 weight of alcohol in the offender's blood shall be reported to the  
29 director within 24 hours. Upon receipt of positive test results, the  
30 director shall, without hearing, immediately issue a preliminary  
31 suspension of any license certificate or nonresident reciprocity  
32 privilege to operate any motor vehicle or motorized bicycle held by the  
33 offender. Along with the notice of preliminary suspension, the  
34 director shall issue a notice of proposed final suspension, revocation

**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 or other final agency action, and shall afford the offender the right to  
2 a preliminary hearing to contest the preliminary suspension and a  
3 plenary hearing to contest the proposed final agency action. In the  
4 case of a first offender under R.S.39:4-50, the director shall suspend  
5 the offender's driver's license for six months. In the case of a second  
6 offender under R.S.39:4-50, the director shall suspend the offender's  
7 driver's license for one year. In the case of a third offender under  
8 R.S.39:4-50, the director shall suspend the offender's driver's license  
9 for two years.

10 The preliminary suspension shall remain in effect pending a final  
11 agency decision on the proposed final agency action, unless a request  
12 for a preliminary hearing is received by the division no later than the  
13 10th day from the date on which the notice was mailed. The proposed  
14 final agency action shall take effect on the date specified in the notice  
15 unless a request for a plenary hearing is received by the division no  
16 later than the 10th day from the date on which the notice was mailed.

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

28 At the preliminary hearing, the parties shall proceed on the papers  
29 submitted to the judge, including the test results and the offender's  
30 prior driving record submitted by the division, and any brief affidavits  
31 permitted by the judge from persons who shall be witnesses at the final  
32 hearing. The parties also may present oral arguments. The judge shall  
33 immediately determine whether the offender refused to submit to  
34 testing or if test results indicated the usage of a controlled dangerous  
35 substance or a blood alcohol concentration of 0.10% or more; and, if  
36 so, whether in the interest of public safety, the preliminary suspension  
37 shall be continued pending the final agency decision on the matter.  
38 The administrative law judge shall transmit his findings to the director.

39 Any plenary hearing to contest the proposed final agency action  
40 shall conform to the requirements for a plenary hearing contained in  
41 subsection b. of R.S.39:5-30.

42 Any determination resulting from any preliminary or plenary hearing  
43 held pursuant to this subsection shall not be admissible evidence in a  
44 criminal or quasi-criminal proceeding on the alleged violation or  
45 violations.

46 c. Pursuant to the provisions of the "Administrative Procedures

1 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the director, in  
2 consultation with the Commissioner of Health, shall promulgate rules  
3 and regulations to effectuate the purposes of this act.

4  
5 3. R.S.39:4-50 is amended to read as follows:

6 39:4-50. (a) A person who operates a motor vehicle while under  
7 the influence of intoxicating liquor, narcotic, hallucinogenic or  
8 habit-producing drug, or operates a motor vehicle with a blood alcohol  
9 concentration of 0.10% or more by weight of alcohol in the  
10 defendant's blood or permits another person who is under the influence  
11 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug  
12 to operate a motor vehicle owned by him or in his custody or control  
13 or permits another to operate a motor vehicle with a blood alcohol  
14 concentration of 0.10% or more by weight of alcohol in the  
15 defendant's blood, shall be subject:

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

26 (2) For a second violation, a person shall be subject to a fine of not  
27 less than \$500.00 nor more than \$1,000.00, and shall be ordered by  
28 the court to perform community service for a period of 30 days, which  
29 shall be of such form and on such terms as the court shall deem  
30 appropriate under the circumstances, and shall be sentenced to  
31 imprisonment for a term of not less than 48 consecutive hours, which  
32 shall not be suspended or served on probation, nor more than 90 days,  
33 and shall forfeit his right to operate a motor vehicle over the highways  
34 of this State for a period of two years upon conviction, and, after the  
35 expiration of said period, he may make application to the Director of  
36 the Division of Motor Vehicles for a license to operate a motor  
37 vehicle, which application may be granted at the discretion of the  
38 director, consistent with subsection (b) of this section.

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

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

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

27 In sentencing an offender under this section and in accordance with  
28 the provisions of P.L. , c. (C. ) (now pending before the  
29 Legislature as this bill), the court shall order the offender to undergo  
30 random testing for usage of intoxicating liquor or controlled  
31 dangerous substances as defined in N.J.S.2C:35-2. The court shall  
32 order such testing to commence immediately upon the return of the  
33 offender's driver's license after the period of suspension has been  
34 served. The court record shall note this requirement as shall the  
35 records of the division. In the case of a first offense, the court shall  
36 order the offender to undergo this testing for a period of two years  
37 after the restoration of the offender's driver's license. In the case of a  
38 second offense, the court shall order the offender to undergo this  
39 testing for a period of five years after the restoration of the offender's  
40 driver's license. In the case of a third offense, the court shall order the  
41 offender to undergo this testing for a period of 10 years after the  
42 restoration of the offender's driver's license.

43 A person who has been convicted of a previous violation of this  
44 section need not be charged as a second or subsequent offender in the  
45 complaint made against him in order to render him liable to the  
46 punishment imposed by this section on a second or subsequent

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

6 (b) A person convicted under this section must satisfy the  
7 screening, evaluation, referral, program and fee requirements of the  
8 Division of Alcoholism and Drug Abuse Intoxicated Driving Program  
9 Unit, and of the Intoxicated Driver Resource Centers and a program  
10 of alcohol education and highway safety, as prescribed by the Director  
11 of the Division of Motor Vehicles. The sentencing court shall inform  
12 the person convicted that failure to satisfy such requirements shall  
13 result in a mandatory two-day term of imprisonment in a county jail  
14 and a driver license revocation or suspension and continuation of  
15 revocation or suspension until such requirements are satisfied, unless  
16 stayed by court order in accordance with Rule 7:8-2 of the Rules  
17 Governing the Courts of the State of New Jersey, or R.S.39:5-22.  
18 Upon sentencing, the court shall forward to the Bureau of Alcohol  
19 Countermeasures within the Intoxicated Driving Program Unit a copy  
20 of a person's conviction record. A fee of \$100.00 shall be payable to  
21 the Alcohol Education, Rehabilitation and Enforcement Fund  
22 established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to  
23 support the Intoxicated Driving Programs Unit.

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

1 to acknowledge in writing the receipt of a written notice shall not be  
2 a defense to a subsequent charge of a violation of this section.

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

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

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

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

38 Required detention periods at the Intoxicated Driver Resource  
39 Centers shall be determined according to the individual treatment  
40 classification assigned by the Bureau of Alcohol Countermeasures.  
41 Upon attendance at an Intoxicated Driver Resource Center, a person  
42 shall be required to pay a per diem fee of \$75.00 for the first offender  
43 program or a per diem fee of \$100.00 for the second offender  
44 program, as appropriate. Any increases in the per diem fees after the  
45 first full year shall be determined pursuant to rules and regulations  
46 adopted by the Commissioner of Health in consultation with the

1 Governor's Council on Alcoholism and Drug Abuse pursuant to the  
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
3 seq.).

4 The centers shall conduct a program of alcohol education and  
5 highway safety, as prescribed by the Director of the Division of Motor  
6 Vehicles.

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

11 (cf: P.L.1995, c.243, s.1)

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13 4. This act shall take effect on the first day of the sixth month after  
14 enactment; however, the director may take such anticipatory action as  
15 deemed necessary prior to the effective date to provide for its timely  
16 implementation.

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#### STATEMENT

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21 This bill would authorize the Director of the Division Motor  
22 Vehicles in the Department of Transportation to enter into a contract  
23 with a person, corporation or entity to test persons convicted of  
24 driving while intoxicated ("DWI") for use of controlled dangerous  
25 substances and alcoholic beverages. The director, in consultation with  
26 the Department of Health, would develop guidelines governing this  
27 testing. Any person convicted of a DWI violation under R.S.39:4-50  
28 (driving while intoxicated) would be subject to the random testing.

29 The bill requires the court to order commencement of the testing  
30 immediately upon the return of the offender's driver's license after the  
31 offender has served the DWI suspension. The offender would be  
32 subject to random testing for two years after the first DWI conviction,  
33 five years after a second DWI conviction and 10 years after a third  
34 DWI conviction. If the offender refuses to be tested, his driver's  
35 license would continue to be suspended until the required period of  
36 testing had expired.

37 The director would be authorized to immediately suspend, without  
38 a hearing, the offender's driver's license upon notice of test results  
39 indicating use of a controlled dangerous substance or that the  
40 offender's blood alcohol concentration was greater than 0.10% (the  
41 legal standard for intoxication). However, the offender would be  
42 permitted to request a hearing before an administrative law judge to  
43 determine whether the director's preliminary suspension should be  
44 continued pending the final agency decision. The offender may also  
45 request a hearing to contest the proposed final suspension. The  
46 hearing would be conducted in the same manner as hearings for

1 administrative suspensions of driver's licenses for other motor vehicle  
2 violations as set forth in R.S.39:5-30.

3 In the case of a first DWI offense under R.S.39:4-50, the director  
4 would be required to suspend the offender's driver's license for six  
5 months for a positive test result. In the case of a second DWI offense  
6 under R.S.39:4-50, the director would be required to suspend the  
7 offender's driver's license for one year. In the case of a third DWI  
8 offense under R.S.39:4-50, the director would be required to suspend  
9 the offender's driver's license for two years.

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14 Requires random testing for drugs and alcohol of persons convicted of  
15 driving while intoxicated.