

SENATE, No. 1953

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Senator SCOTT

1 AN ACT concerning driving under the influence and amending
2 R.S.39:5-30.

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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.39:5-30 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
33 required. These fees shall be paid when the witness is excused from
34 further attendance, and the disbursements made from payment of 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 fees shall be audited and paid in the manner provided for expenses of
2 the department. The actual conduct of said hearing may be delegated
3 by the director to such departmental employees as he may designate,
4 in which case the said employees shall recommend to the director in
5 writing whether the said licenses or certificates shall or shall not be
6 suspended or revoked.

7 b. Whenever a matter is presented to the director involving an
8 alleged violation of

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

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

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

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

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

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

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

1 law and a death occurred; and, if so, whether in the interest of public
2 safety, a preliminary suspension shall be immediately ordered pending
3 the plenary hearing on the proposed suspension or revocation. The
4 administrative law judge shall transmit his findings to the director.

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

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

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

30 e. Whenever a matter is presented to the director involving an
31 alleged violation of

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

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

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

39 (4) R.S.39:4-129, wherein the death or serious bodily injury of
40 another has occurred, the director for good cause may, without
41 hearing, immediately issue a preliminary suspension of any license
42 certificate or any nonresident reciprocity privilege to operate any
43 motor vehicle or motorized bicycle held by an individual charged or
44 temporary order prohibiting the individual from obtaining any license
45 to operate any motor vehicle or motorized bicycle in this State. In any
46 case involving an alleged violation of R.S.39:4-50 which has resulted

1 in the death or serious bodily injury of another, the director shall
2 immediately issue the preliminary suspension or temporary order. For
3 purposes of this subsection, "serious bodily injury" means bodily injury
4 which creates a substantial risk of death or which causes serious,
5 permanent disfigurement, or protracted loss or impairment of the
6 function of any bodily member or organ. Along with the notice of
7 preliminary suspension, the director shall issue a notice of proposed
8 final suspension, revocation or other final agency action, and shall
9 afford the individual the right to a preliminary hearing to contest the
10 preliminary suspension and a plenary hearing to contest the proposed
11 final agency action.

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

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

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

43 Any plenary hearing to contest the proposed final agency action
44 shall conform to the requirements for a plenary hearing contained in
45 subsection b. of this section.

46 f. In addition to any other final agency action, the director shall

1 require any person whose privileges to operate a motor vehicle or
2 motorized bicycle are suspended or who has been prohibited from
3 obtaining a license, pursuant to this section, to be reexamined to
4 determine the person's ability to operate a motor vehicle or motorized
5 bicycle, prior to regaining or obtaining any driving privileges in this
6 State.

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

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

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13 2. This act shall take effect immediately.

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STATEMENT

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

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