

SENATE, No. 2257

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senator KOSCO

1 AN ACT concerning the operation of a motor vehicle under the
2 influence of drugs or alcohol and amending R.S.39:4-50, P.L.1966,
3 c.142 and P.L.1981, c.512.

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 any other substance or combination of
12 substances, which has impaired the person's ability to operate a motor
13 vehicle, or operates a motor vehicle with a blood alcohol
14 concentration of 0.10% or more by weight of alcohol in the
15 defendant's blood or permits another person who is under the influence
16 of intoxicating liquor, narcotic, hallucinogenic or habit-producing
17 drug, or any other substance or combination of substances, which has
18 impaired the person's ability to operate a motor vehicle owned by him
19 or in his custody or control or permits another to operate a motor
20 vehicle with a blood alcohol concentration of 0.10% or more by
21 weight of alcohol in the defendant's blood, shall be subject:

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

32 (2) For a second violation, a person shall be subject to a fine of not
33 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
34 the court to perform community service for a period of 30 days, which

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

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

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

45 A person who has been convicted of a previous violation of this
46 section need not be charged as a second or subsequent offender in the

1 complaint made against him in order to render him liable to the
2 punishment imposed by this section on a second or subsequent
3 offender, but if the second offense occurs more than 10 years after the
4 first offense, the court shall treat the second conviction as a first
5 offense for sentencing purposes and if a third offense occurs more than
6 10 years after the second offense, the court shall treat the third
7 conviction as a second offense for sentencing purposes.

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

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

1 this section. A person shall be required to acknowledge receipt of that
2 written notice in writing. Failure to receive a written notice or failure
3 to acknowledge in writing the receipt of a written notice shall not be
4 a defense to a subsequent charge of a violation of this section.

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

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

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

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

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

1 first full year shall be determined pursuant to rules and regulations
2 adopted by the Commissioner of Health in consultation with the
3 Governor's Council on Alcoholism and Drug Abuse pursuant to the
4 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
5 seq.).

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

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

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

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15 2. Section 2 of P.L.1966, c.142 (C.39:4-50.2) is amended to read
16 as follows:

17 2. (a) Any person who operates a motor vehicle on any public
18 road, street or highway or quasi-public area in this State shall be
19 deemed to have given his consent to the taking of samples of his
20 breath for the purpose of making chemical tests to determine the
21 content of alcohol in his blood, and to submitting to evaluations by a
22 certified drug recognition expert upon request of a law enforcement
23 officer to determine whether the person is under the influence of any
24 drug or other substance or combination of substances which can impair
25 the person's ability to operate a motor vehicle; provided, however, that
26 the taking of samples and conducting of evaluations [is] are made in
27 accordance with the provisions of this act and at the request of a
28 police officer who has reasonable grounds to believe that such person
29 has been operating a motor vehicle in violation of the provisions of
30 R.S.39:4-50.

31 (b) A record of the taking of any such sample or conducting of such
32 evaluations, disclosing the date and time thereof, as well as the result
33 of any chemical test or evaluation, shall be made and a copy thereof,
34 upon his request, shall be furnished or made available to the person
35 so tested.

36 (c) In addition to the samples taken and tests and evaluations made
37 at the direction of a police officer hereunder, the person tested shall be
38 permitted to have such samples taken and chemical tests of his breath,
39 urine or blood, and other evaluations to determine drug impairment,
40 made by a person or physician of his own selection.

41 (d) The police officer shall inform the person tested of his rights
42 under subsections (b) and (c) of this section.

43 (e) No chemical test, or evaluation for drug impairment, as
44 provided in this section, or specimen necessary thereto, may be made
45 or taken forcibly and against physical resistance thereto by the
46 defendant. The police officer shall, however, inform the person

1 arrested of the consequences of refusing to submit to such test or
2 evaluation in accordance with section 2 of this amendatory and
3 supplementary act. A standard statement, prepared by the director,
4 shall be read by the police officer to the person under arrest.

5 (f) As used in this act, a certified drug recognition expert is an
6 individual who is specially trained to conduct examinations of
7 suspected drug impaired drivers.

8 (cf: P.L.1981, c.512, s.1)

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10 3. Section 2 of P.L.1981, c.512 (C.39:4-50.4a) is amended to read
11 as follows:

12 2. The municipal court shall revoke the right to operate a motor
13 vehicle of any operator who, after being arrested for a violation of
14 R.S.39:4-50, shall refuse to submit to a test or evaluation provided for
15 in section 2 of P.L.1966, c.142 (C.39:4-50.2) when requested to do
16 so, for six months unless the refusal was in connection with a second
17 offense under this section, in which case the revocation period shall be
18 for two years or unless the refusal was in connection with a third or
19 subsequent offense under this section, in which case the revocation
20 shall be for 10 years.

21 The municipal court shall determine by a preponderance of the
22 evidence whether the arresting officer had probable cause to believe
23 that the person had been driving or was in actual physical control of
24 a motor vehicle on the public highways or quasi-public areas of this
25 State while the person was under the influence of intoxicating liquor
26 or a narcotic, hallucinogenic or habit-producing drug [or], marihuana
27 or any other substance or combination of substances, which impaired
28 the person's ability to operate a motor vehicle; whether the person was
29 placed under arrest, if appropriate; and whether he refused to submit
30 to the test or evaluation upon request of the officer; and if these
31 elements of the violation are not established, no conviction shall issue.
32 In addition to any other requirements provided by law, a person whose
33 operator's license is revoked for refusing to submit to a test or
34 evaluation shall be referred to an Intoxicated Driver Resource Center
35 established by subsection (f) of R.S.39:4-50 and shall satisfy the same
36 requirements of the center for refusal to submit to a test as provided
37 for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with
38 a first, second, third or subsequent offense under this section that must
39 be satisfied by a person convicted of a commensurate violation of this
40 section, or be subject to the same penalties as such a person for failure
41 to do so. The revocation shall be independent of any revocation
42 imposed by virtue of a conviction under the provisions of R.S.39:4-50.
43 In addition to issuing a revocation, the municipal court shall fine a
44 person convicted under this section, a fine of not less than \$250.00 nor
45 more than \$500.00.

46 (cf: P.L.1994, c.184, s.2)

