

CHAPTER 512 LAWS OF N. J. 1981
APPROVED 1-12-82

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ASSEMBLY, No. 2293

STATE OF NEW JERSEY

INTRODUCED DECEMBER 8, 1980

By Assemblyman HERMAN

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT to amend and supplement "An act concerning motor vehicles and to amend and supplement 'An act concerning traffic regulations, and amending and supplementing chapter 4 of Title 39 of the Revised Statutes and certain other statutes relating thereto,' approved April 15, 1951 (P. L. 1951, c. 23)," approved June 18, 1966 (P. L. 1966, c. 142) and repealing section 4 thereof.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 2. (a) Any person who operates a motor vehicle on any public
4 road, street or highway or quasi-public area in this State shall be
5 deemed to have given his consent to the taking of samples of his
6 breath for the purpose of making chemical tests to determine the
7 content of alcohol in his blood; provided, however, that the taking
8 of samples is made in accordance with the provisions of this act
9 and at the request of a police officer who has reasonable grounds to
10 believe that such person has been operating a motor vehicle in
11 violation of the provisions of R. S. 39:4-50.

12 (b) A record of the taking of any such sample, disclosing the
13 date and time thereof, as well as the result of any chemical test,
14 shall be made and a copy thereof, upon his request, shall be fur-
15 nished or made available to the person so tested.

16 (c) In addition to the samples taken and tests made at the
17 direction of a police officer hereunder, the person tested shall be
18 permitted to have such samples taken and chemical tests of his
19 breath, urine or blood made by a person or physician of his own
20 selection.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

21 (d) The police officer shall inform the person tested of his rights.
22 under subsection (b) and (c) of this section.

23 (e) No chemical test, as provided in this section, or specimen
24 necessary thereto, may be made or taken forcibly and against
25 physical resistance thereto by the defendant[, the]. *The police*
26 *officer shall, however, inform the person arrested of the con-*
27 *sequences of refusing to submit to such test [under section 4 of P.*
28 *L. 1966, c. 142 (C. 39:4-50.4)] in accordance with section 2 of this*
29 *amendatory and supplementary act. A standard statement, pre-*
30 *pared by the director, shall be read by the police officer to the*
31 *person under arrest.*

1 2. (New section) **[Any operator of a motor vehicle]* *The*
2 *municipal court shall revoke the right to operate a motor vehicle*
3 *of any operator* who, after being arrested for a violation of R. S.*
4 *39:4-50, shall refuse to submit to the chemical test provided for in*
5 *section *[3]* *2* of P. L. 1966, c. 142 *(C. 39:4-50.3)* *(C.*
6 *39:4-50.2)* when requested to do so, *[shall be subject to revoca-*
7 *tion of the right to operate a motor vehicle]* for 90 days unless*
8 *the refusal was in connection with a subsequent offense under*
9 **[R. S. 39:4-50.]* *this section*, in which case the revocation*
10 *period shall be for 1 year.*

11 The municipal court shall determine ***[beyond a reasonable*
12 *doubt]** **by a preponderance of the evidence*** whether the
13 arresting officer had ***[reasonable grounds]** **probable cause***
14 to believe that the person had been driving or was in actual physical
15 control of a motor vehicle on the public highways or quasi-public
16 areas of this State while under the influence of intoxicating liquor
17 or a narcotic, hallucinogenic, or habit-producing drug or mari-
18 huana, whether the person was placed under arrest, and whether
19 he refused to submit to the test upon request of the officer, and if
20 ***[such reasonable grounds]** **these elements of the violation***
21 are not established, no conviction shall issue. In addition to any
22 other requirements provided by law, a person whose operator's
23 license is revoked for refusing to submit to a chemical test shall
24 satisfy the requirements of a program of alcohol education or
25 rehabilitation pursuant to the provisions of R. S. 39:4-50. The
26 revocation shall be independent of any revocation imposed by
27 virtue of a conviction under the provisions of R. S. 39:4-50.

1 3. Section 4 of P. L. 1966, c. 142 (C. 39:4-50.4) is repealed.

1 4. This act shall take effect immediately.

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7 content of alcohol in his blood; provided, however, that the taking
8 of samples is made in accordance with the provisions of this act
9 and at the request of a police officer who has reasonable grounds to
10 believe that such person has been operating a motor vehicle in
11 violation of the provisions of R. S. 39:4-50.

12 (b) A record of the taking of any such sample, disclosing the
13 date and time thereof, as well as the result of any chemical test,
14 shall be made and a copy thereof, upon his request, shall be fur-
15 nished or made available to the person so tested.

16 (c) In addition to the samples taken and tests made at the
17 direction of a police officer hereunder, the person tested shall be
18 permitted to have such samples taken and chemical tests of his
19 breath, urine or blood made by a person or physician of his own
20 selection.

21 (d) The police officer shall inform the person tested of his rights
22 under subsection (b) and (c) of this section.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

23 (e) No chemical test, as provided in this section, or specimen
 24 necessary thereto, may be made or taken forcibly and against
 25 physical resistance thereto by the defendant[, the]. *The* police
 26 officer shall, however, inform the person arrested of the con-
 27 sequences of refusing to submit to such test [under section 4 of P.
 28 L. 1966, c. 142 (C. 39:4-50.4)] *in accordance with section 2 of this*
 29 *amendatory and supplementary act.* A standard statement, pre-
 30 pared by the director, shall be read by the police officer to the
 31 person under arrest.

1 2. (New section) Any operator of a motor vehicle who, after
 2 being arrested for a violation of R. S. 39:4-50, shall refuse to sub-
 3 mit to the chemical test provided for in section 3 of P. L. 1966, c.
 4 142 (C. 39:4-50.3) when requested to do so, shall be subject to
 5 revocation of the right to operate a motor vehicle for 90 days
 6 unless the refusal was in connection with a subsequent offense
 7 under R. S. 39:4-50, in which case the revocation period shall be
 8 for 1 year.

9 The municipal court shall determine whether the arresting
 10 officer had reasonable grounds to believe that the person had been
 11 driving or was in actual physical control of a motor vehicle on the
 12 public highways or quasi-public areas of this State while under the
 13 influence of intoxicating liquor or a narcotic, hallucinogenic, or
 14 habit-producing drug or marihuana, whether the person was
 15 placed under arrest, and whether he refused to submit to the test
 16 upon request of the officer, and if such reasonable grounds are not
 17 established, no conviction shall issue. In addition to any other
 18 requirements provided by law, a person whose operator's license
 19 is revoked for refusing to submit to a chemical test shall satisfy
 20 the requirements of a program of alcohol education or rehabilita-
 21 tion pursuant to the provisions of R. S. 39:4-50. The revocation
 22 shall be independent of any revocation imposed by virtue of a
 23 conviction under the provisions of R. S. 39:4-50.

1 3. Section 4 of P. L. 1966, c. 142 (C. 39:4-50.4) is repealed.

1 4. This act shall take effect immediately.

SPONSOR'S STATEMENT

Under present law, a law enforcement officer may require an individual to take a breathalyzer to determine the content of alcohol in his system if he has reasonable grounds to believe the person is driving in violation of R. S. 39:4-50 under an administration proceeding. Refusal to submit to the test will normally result in a suspension for 90 days.

The bill would repeal R. S. 39:4-50.4 which provides for the administrative handling of the "refusal to submit to test" cases. The new section would take away the jurisdiction of the Office of Administrative Law and the Division of Motor Vehicles in such cases and put them in the municipal courts. According to the Office of Administrative Law they had 1,500 cases referred to them last year. Since they began their operation in early march, this means that projected over a full 12-month period, there are about 1,750 such cases a year that would go to the municipal courts, presumably to be handled at the same hearing that a driving while intoxicated case was heard.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2293

STATE OF NEW JERSEY

DATED: MAY 14, 1981

Under present law, a law enforcement officer may require an individual to take a breathalyzer test to determine the content of alcohol in his system if he has reasonable grounds to believe that the person is driving while under the influence. Refusal to submit to the test will result in revocation of driving privileges for 90 days.

Currently, handling of the "refusal to submit to breathalyzer test" cases is by an administrative proceeding through the Office of Administrative Law and the Division of Motor Vehicles. Assembly No. 2293 would transfer jurisdiction over these cases to the municipal courts. It is felt that expansion of municipal court jurisdiction over refusal hearings would provide an efficacious means of disposing of all issues related to the drunk driving law in the most convenient forum.

The committee amendments clarify that the 90 day suspension period is mandatory; that the municipal court rather than the Division of Motor Vehicles suspends the driver's license and that the burden of proof in refusal cases be established "beyond a reasonable doubt." The committee amendments also correct some incorrect references.

Assembly Bill No. 2293 is supported by the Office of Administrative Law and the Division of Motor Vehicles.

SENATE COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 2293

STATE OF NEW JERSEY

ADOPTED MAY 14, 1981

Amend page 2, section 2, line 1, omit "Any operator of a motor vehicle", insert "The municipal court shall revoke the right to operate a motor vehicle of any operator".

Amend page 2, section 2, line 3, omit "3", insert "2".

Amend page 2, section 2, line 4, omit "(C. 39:4-50.3)", insert "(C. 39:4-50.2)".

Amend page 2, section 2, lines 4-5, omit "shall be subject to revocation of the right to operate a motor vehicle".

Amend page 2, section 2, line 7, omit "R. S. 39:4-50", insert "this section".

Amend page 2, section 2, line 9, after "determine", insert "beyond a reasonable doubt".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 4, 1982

ASSEMBLY BILL NO. 2293 (SR)

To the Assembly:

Pursuant to Article V, Section 1, Paragraph 14 (b) of the Constitution, I herewith return Assembly Bill No. 2293 (SR) with my objections, for reconsideration.

This bill would transfer jurisdiction over "refusal to submit to breathalyzer test" cases from the Office of Administrative Law and the Division of Motor Vehicles to municipal courts. With that concept, I concur.

The bill, however, provides that the court must conclude beyond a reasonable doubt that the arresting officer had reasonable grounds to believe that the person was driving under the influence of alcohol or drugs and refused to submit to a breathalyzer test before a conviction may issue. There are two problems with this requirement.

First, I believe that the beyond a reasonable doubt standard of proof is an unusually harsh burden of proof in a non-criminal case and will encourage more people to refuse to submit to a breathalyzer test. Thus, I recommend that the preponderance of the evidence standard currently utilized in the administrative hearing of this type of case be retained.

I also believe that it is preferable to require that a police officer have probable cause to believe that a person was driving under the influence before ordering a driver to take a breathalyzer test. This provides an objective test for the court, as opposed to a subjective reasonable grounds test, and is consistent with the standard for other types of investigative stops.

Accordingly, I herewith return Assembly Bill No. 2293 (SR) with the following amendments, for reconsideration:

Page 2, Section 2, Line 11: DELETE "beyond a reasonable doubt" INSERT
"by a preponderance of the evidence"

Page 2, Section 2, Line 12: DELETE "reasonable grounds" INSERT "probable
cause"

STATE OF NEW JERSEY
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Page 2, Section 2, Line 18: DELETE "such reason -" INSERT "these
elements of the violation"

Page 2, Section 2, Line 19: DELETE "able grounds"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

Chief of Staff, Secretary