

39:4-50.2

LEGISLATIVE HISTORY CHECKLIST
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(Drug testing--MV accident)

NJSA: 39:4-50.2

LAWS OF: 1994 **CHAPTER:** 184

BILL NO: A763

SPONSOR(S): Catania and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: ---

AMENDED DURING PASSAGE: Yes **Amendments during passage**
First reprint enacted **denoted by superscript numbers**

DATE OF PASSAGE: **ASSEMBLY:** May 16, 1994
SENATE: November 10, 1994

DATE OF APPROVAL: December 23, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

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1 AN ACT concerning ¹[refusal to take a test when arrested for]¹
2 driving while under the influence of liquor or drugs, amending
3 ¹[P.L.1986, c.142] R.S. 39:4-50¹, P.L.1981, c.512 ¹[and] ¹
4 P.L.1984, c.4 ¹and R.S.39:5-25¹.

5
6 BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

8 ¹[1. Section 2 of P.L.1986, c.142 (C.39:4-50:2) is amended to
9 read as follows:

10 2. (a) Any person who operates a motor vehicle on any public
11 road, street or highway or quasi-public area in this State shall be
12 deemed to have given his consent to the taking of samples of his
13 breath for the purpose of making chemical tests to determine the
14 content of alcohol in his blood; provided, however, that the taking
15 of samples is made in accordance with the provisions of this act
16 and at the request of a police officer who has reasonable grounds
17 to believe that such person has been operating a motor vehicle in
18 violation of the provisions of R.S.39:4-50 or has been operating a
19 motor vehicle which was involved in an accident resulting in
20 serious bodily injury or death to any person. As used in this
21 section, "serious bodily injury" means bodily injury which creates
22 a substantial risk of death or which causes serious, permanent
23 disfigurement, protracted loss or impairment of the function of
24 any bodily member or organ.

25 (b) A record of the taking of any such sample, disclosing the
26 date and time thereof, as well as the result of any chemical test,
27 shall be made and a copy thereof, upon his request, shall be
28 furnished or made available to the person so tested.

29 (c) In addition to the samples taken and tests made at the
30 direction of a police officer hereunder, the person tested shall be
31 permitted to have such samples taken and chemical tests of his
32 breath, urine or blood made by a person or physician of his own
33 selection.

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

36 (e) No chemical test, as provided in this section, or specimen
37 necessary thereto, may be made or taken forcibly and against
38 physical resistance thereto by the defendant. The police officer
39 shall, however, inform the person arrested of the consequences of
40 refusing to submit to such test in accordance with section 2 of
41 this amendatory and supplementary act. A standard statement,
42 prepared by the director, shall be read by the police officer to
43 the person under arrest.

44 (cf: P.L.1981, c.512, s.1)]¹

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted March 21, 1994.

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

2 39:4-50. (a) A person who operates a motor vehicle while under
3 the influence of intoxicating liquor, narcotic, hallucinogenic or
4 habit-producing drug, or operates a motor vehicle with a blood
5 alcohol concentration of 0.10% or more by weight of alcohol in
6 the defendant's blood or permits another person who is under the
7 influence of intoxicating liquor, narcotic, hallucinogenic or
8 habit-producing drug to operate a motor vehicle owned by him or
9 in his custody or control or permits another to operate a motor
10 vehicle with a blood alcohol concentration of 0.10% or more by
11 weight of alcohol in the defendant's blood, shall be subject:

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

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

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

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

50 If the driving privilege of any person is under revocation or
51 suspension for a violation of any provision of this Title or Title
52 2C of the New Jersey Statutes at the time of any conviction for a
53 violation of this section, the revocation or suspension period
54 imposed shall commence as of the date of termination

1 of the existing revocation or suspension period. In the case of
2 any person who at the time of the imposition of sentence is less
3 than 17 years of age, the forfeiture, suspension or revocation of
4 the driving privilege imposed by the court under this section shall
5 commence immediately, run through the offender's seventeenth
6 birthday and continue from that date for the period set by the
7 court pursuant to paragraphs (1) through (3) of this subsection. A
8 court that imposes a term of imprisonment under this section
9 may sentence the person so convicted to the county jail, to the
10 workhouse of the county wherein the offense was committed, to
11 an inpatient rehabilitation program or to an Intoxicated Driver
12 Resource Center or other facility approved by the Director of the
13 Division of Alcoholism in the Department of Health; provided
14 that for a third or subsequent offense a person shall not serve a
15 term of imprisonment at an Intoxicated Driver Resource Center
16 as provided in subsection (f).

17 A person who has been convicted of a previous violation of this
18 section need not be charged as a second or subsequent offender in
19 the complaint made against him in order to render him liable to
20 the punishment imposed by this section on a second or subsequent
21 offender, but if the second offense occurs more than 10 years
22 after the first offense, the court shall treat the second conviction
23 as a first offense for sentencing purposes and if a third offense
24 occurs more than 10 years after the second offense, the court
25 shall treat the third conviction as a second offense for sentencing
26 purposes.

27 (b) A person convicted under this section must satisfy the
28 screening, evaluation, referral, program and fee requirements of
29 the Division of Alcoholism's Intoxicated Driving Programs Unit,
30 and of the Intoxicated Driver Resource Centers and a program of
31 alcohol education and highway safety, as prescribed by the
32 Director of the Division of Motor Vehicles. The sentencing court
33 shall inform the person convicted that failure to satisfy such
34 requirements shall result in a mandatory two day term of
35 imprisonment in a county jail and a driver license revocation or
36 suspension and continuation of revocation or suspension until such
37 requirements are satisfied, unless stayed by court order in
38 accordance with Rule 7:8-2 of the N.J. Court Rules, 1969, or
39 R.S.39:5-22. Upon sentencing, the court shall forward to the
40 Bureau of Alcohol Countermeasures within the Intoxicated
41 Driving Programs Unit a copy of a person's conviction record. A
42 fee of \$80.00 shall be payable to the Alcohol Education,
43 Rehabilitation and Enforcement Fund established pursuant to
44 section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
45 Intoxicated Driving Programs Unit.

46 (c) Upon conviction of a violation of this section, the court
47 shall collect forthwith the New Jersey driver's license or licenses
48 of the person so convicted and forward such license or licenses to
49 the Director of the Division of Motor Vehicles. The court shall
50 inform the person convicted that if he is convicted of personally
51 operating a motor vehicle during the period of license suspension
52 imposed pursuant to subsection (a) of this section, he shall, upon
53 conviction, be subject to the penalties established in R.S.39:3-40.
54 The person convicted shall be informed orally and in writing. A

1 person shall be required to acknowledge receipt of that written
2 notice in writing. Failure to receive a written notice or failure to
3 acknowledge in writing the receipt of a written notice shall not
4 be a defense to a subsequent charge of a violation of
5 R.S.39:3-40. In the event that a person convicted under this
6 section is the holder of any out-of-State driver's license, the
7 court shall not collect the license but shall notify forthwith the
8 director, who shall, in turn, notify appropriate officials in the
9 licensing jurisdiction. The court shall, however, revoke the
10 nonresident's driving privilege to operate a motor vehicle in this
11 State, in accordance with this section. Upon conviction of a
12 violation of this section, the court shall notify the person
13 convicted, orally and in writing, of the penalties for a second,
14 third or subsequent violation of this section. A person shall be
15 required to acknowledge receipt of that written notice in
16 writing. Failure to receive a written notice or failure to
17 acknowledge in writing the receipt of a written notice shall not
18 be a defense to a subsequent charge of a violation of this section.

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

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

30 (f) The counties, in cooperation with the Division of
31 Alcoholism and the Division of Motor Vehicles, but subject to the
32 approval of the Division of Alcoholism, shall designate and
33 establish on a county or regional basis Intoxicated Driver
34 Resource Centers. These centers shall have the capability of
35 serving as community treatment referral centers and as court
36 monitors of a person's compliance with the ordered treatment,
37 service alternative or community service. All centers established
38 pursuant to this subsection shall be administered by a certified
39 alcoholism counselor or other professional with a minimum of
40 five years' experience in treatment of alcoholism. All centers
41 shall be required to develop individualized treatment plans for all
42 persons attending the centers; provided that the duration of any
43 ordered treatment or referral shall not exceed one year. It shall
44 be the center's responsibility to establish networks with the
45 community alcohol education, treatment and rehabilitation
46 resources and to receive monthly reports from the referral
47 agencies regarding a person's participation and compliance with
48 the program. Nothing in this subsection shall bar these centers
49 from developing their own education and treatment programs;
50 provided that they are approved by the Division of Alcoholism.

51 Upon a person's failure to report to the initial screening or any
52 subsequent ordered referral, the Intoxicated Driver Resource
53 Center shall promptly notify the sentencing court of the person's
54 failure to comply.

1 Required detention periods at the Intoxicated Driver Resource
2 Centers shall be determined according to the individual
3 treatment classification assigned by the Bureau of Alcohol
4 Countermeasures. Upon attendance at an Intoxicated Driver
5 Resource Center, a person shall be assessed a per diem fee of
6 \$50.00 for the first offender program or a per diem fee of \$75.00
7 for the second offender program, as appropriate.

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

11 The Director of the Division of Alcoholism shall adopt rules
12 and regulations pursuant to the "Administrative Procedure Act,"
13 P.L.1988, c.410 (C.52:14B-1 et seq.), in order to effectuate the
14 purposes of this subsection.¹

15 (cf: P.L. 1993, c.296, s.6)

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

18 2. The municipal court shall revoke the right to operate a
19 motor vehicle of any operator who, after being arrested for a
20 violation of R.S.39:4-50 ¹[or after being involved in an accident
21 resulting in serious bodily injury or death to any person]¹, shall
22 refuse to submit to [the chemical] a test provided for in section 2
23 of P.L.1988, c.142 (C.39:4-50.2) when requested to do so, for six
24 months unless the refusal was in connection with a [subsequent]
25 second offense under [this section] ¹[R.S.39:4-50] this section¹, in
26 which case the revocation period shall be for two years or unless
27 the refusal was in connection with a third or subsequent offense
28 under ¹[R.S.39:4-50] this section¹, in which case the revocation
29 shall be for 10 years.

30 The municipal court shall determine by a preponderance of the
31 evidence whether the arresting officer had probable cause to
32 believe that the person had been driving or was in actual physical
33 control of a motor vehicle on the public highways or quasi-public
34 areas of this State ¹[when an accident resulting in death or
35 serious bodily injury occurred or]¹ while the person was under the
36 influence of intoxicating liquor or a [narcotic, hallucinogenic, or
37 habit-producing drug or marihuana,] ¹[controlled dangerous
38 substance] narcotic, hallucinogenic, or habit-producing drug or
39 marihuana¹; whether the person was placed under arrest, if
40 appropriate; and whether he refused to submit to the test upon
41 request of the officer[.]; and if these elements of the violation
42 are not established, no conviction shall issue. In addition to any
43 other requirements provided by law, a person whose operator's
44 license is revoked for refusing to submit to a [chemical] test shall
45 be referred to an Intoxicated Driver Resource Center established
46 by subsection (f) of R.S.39:4-50 and shall satisfy the same
47 requirements of [a program of alcohol education or rehabilitation
48 pursuant to the provisions of R.S.39:4-50] the center for refusal
49 to submit to a test as provided for in section 2 of P.L.1988, c.142
50 (C.39:4-50.2) in connection with a first, second, third or
51 subsequent offense under ¹[R.S.39:4-50] this section¹ that must
52 be satisfied by a person convicted of a commensurate violation of
53 ¹[R.S.39:4-50] this section¹, or be subject to the same penalties
54 as such a person for failure to do so. The revocation shall be

1 independent of any revocation imposed by virtue of a conviction
2 under the provisions of R.S.39:4-50.

3 In addition to issuing a revocation, the municipal court shall
4 fine a person convicted under this section, a fine of not less than
5 \$250.00 nor more than \$500.00.

6 (cf: P.L.1981, c.537, s.2)

7 3. Section 1 of P.L.1984, c.4 (C.39:4-50.8) is amended to read
8 as follows:

9 1. Upon a conviction of a violation of R.S.39:4-50 or section 2
10 of P.L.1981, c.512 (C.39:4-50.4a), the court shall collect from the
11 defendant a surcharge of \$100.00 in addition to and independently
12 of any fine imposed on that defendant. The court shall forward
13 the surcharge to the Director of the Division of Motor Vehicles
14 who shall deposit \$95.00 of the surcharge into a "Drunk Driving
15 Enforcement Fund" (hereinafter referred to as the "fund"). This
16 fund shall be used to establish a Statewide drunk driving
17 enforcement program to be supervised by the director. The
18 remaining \$5.00 of each surcharge shall be deposited by the
19 director into a separate fund for administrative expenses.

20 A municipality shall be entitled to periodic grants from the
21 "Drunk Driving Enforcement Fund" in amounts representing its
22 proportionate contribution to the fund. A municipality shall be
23 deemed to have contributed to the fund the portion of the
24 surcharge allocated to the fund, collected pursuant to this section
25 if the violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
26 (C.39:4-50.4a) occurred within the municipality and the arrest
27 resulting in conviction was made by the member of a municipal
28 police force. The grants from the fund shall be used by the
29 municipality to increase enforcement of R.S.39:4-50 by
30 subsidizing additional law enforcement patrols and through other
31 measures approved by the director. The Division of State Police,
32 interstate law enforcement agencies and county law enforcement
33 agencies shall be entitled to periodic grants from the fund in
34 amounts representing their proportionate contribution to the
35 fund. The Division of State Police or county or interstate law
36 enforcement agency shall be in deemed to have contributed to
37 the fund the portion of the surcharge allocated to the fund
38 collected pursuant to this section if the arrest resulting in a
39 conviction was made by a member of the Division of State Police
40 or county or interstate law enforcement agency. The grants from
41 the fund shall be used by the Division of State Police or county or
42 interstate law enforcement agency to increase enforcement of
43 R.S.39:4-50 by subsidizing additional law enforcement patrols and
44 through other measures approved by the director.

45 The surcharge described herein shall not be considered a fine,
46 penalty or forfeiture to be distributed pursuant to R.S.39:5-41.

47 The director shall promulgate rules and regulations in order to
48 effectuate the purposes of this section.

49 (cf: P.L.1984, c.4, s.1)

50 14. R.S. 39:5-25 is amended to read as follows:

51 39:5-25. Any [constable, sheriff's officer, police officer,
52 peace officer, or the director] law enforcement officer may,
53 without a warrant, arrest any person violating in his presence any
54 provision of chapter 3 of this Title, or any person, other than a

1 motorman or person having control of a street car or auto bus,
2 running upon a route approved by the Board of Public Utilities,
3 violating in his presence any provision of chapter 4 of this Title.
4 A law enforcement officer may arrest without a warrant any
5 person who the officer has probable cause to believe has operated
6 a motor vehicle in violation of R.S.39:4-50 or section 5 of P.L.
7 1982, c. 103 (C.39:3-10.13), regardless of whether the suspected
8 violation occurs in the officer's presence. The exemption from
9 arrest of a motorman or person having control of a street car or
10 auto bus, as conferred herein, shall not operate to prevent his
11 arrest, however, for a violation of R.S.39:4-50. The arresting
12 officer shall bring any person so arrested before any judge of the
13 municipal court of the municipality wherein the offense is
14 committed, or before the director at any place designated as his
15 office. If the arrest is for a violation of R.S.39:4-50, the
16 arresting officer may, if no judge, clerk or deputy clerk is
17 available, detain the person arrested, either in any police station,
18 lockup or other place maintained by any municipality for the
19 detention of offenders or in the common jail of the county, for
20 such reasonable time as will permit the arresting officer to
21 obtain a warrant for the offender's further detention, which
22 temporary detention shall not exceed 24 hours from the time of
23 the arrest. If the arrest is for a violation of any other provision
24 of this subtitle, the person arrested shall be detained in the police
25 station or municipal court until the arresting officer makes a
26 complaint and a warrant issues.

27 Any [constable, sheriff's officer, police officer, peace officer,
28 or the director] law enforcement officer may, instead of
29 arresting an offender as herein provided, serve upon him a
30 summons.¹

31 (cf: P.L.1983, c. 563, s.1)

32 ¹[4.] 5.1 This act shall take effect immediately.

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38

Permits police officer at accident resulting in death or injury to
test motor vehicle operator for alcohol.

(FIRST REPRINT)
ASSEMBLY, No. 763

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen CATANIA, STUHLTRAGER and Mikulak

1 AN ACT concerning ¹[refusal to take a test when arrested for]¹
2 driving while under the influence of liquor or drugs, amending
3 ¹[P.L.1986, c.142] R.S. 39:4-50¹, P.L.1981, c.512 ¹[and] ¹
4 P.L.1984, c.4 ¹and R.S.39:5-25¹.

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

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9 read as follows:

10 2. (a) Any person who operates a motor vehicle on any public
11 road, street or highway or quasi-public area in this State shall be
12 deemed to have given his consent to the taking of samples of his
13 breath for the purpose of making chemical tests to determine the
14 content of alcohol in his blood; provided, however, that the taking
15 of samples is made in accordance with the provisions of this act
16 and at the request of a police officer who has reasonable grounds
17 to believe that such person has been operating a motor vehicle in
18 violation of the provisions of R.S.39:4-50 or has been operating a
19 motor vehicle which was involved in an accident resulting in
20 serious bodily injury or death to any person. As used in this
21 section, "serious bodily injury" means bodily injury which creates
22 a substantial risk of death or which causes serious, permanent
23 disfigurement, protracted loss or impairment of the function of
24 any bodily member or organ.

25 (b) A record of the taking of any such sample, disclosing the
26 date and time thereof, as well as the result of any chemical test,
27 shall be made and a copy thereof, upon his request, shall be
28 furnished or made available to the person so tested.

29 (c) In addition to the samples taken and tests made at the
30 direction of a police officer hereunder, the person tested shall be
31 permitted to have such samples taken and chemical tests of his
32 breath, urine or blood made by a person or physician of his own
33 selection.

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

36 (e) No chemical test, as provided in this section, or specimen
37 necessary thereto, may be made or taken forcibly and against
38 physical resistance thereto by the defendant. The police officer
39 shall, however, inform the person arrested of the consequences of
40 refusing to submit to such test in accordance with section 2 of
41 this amendatory and supplementary act. A standard statement,
42 prepared by the director, shall be read by the police officer to
43 the person under arrest.

44 (cf: P.L.1981, c.512, s.1)¹

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
¹ Assembly AJL committee amendments adopted March 21, 1994.

1 11. R.S.39:4-50 is amended to read as follows:
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3 the influence of intoxicating liquor, narcotic, hallucinogenic or
4 habit-producing drug, or operates a motor vehicle with a blood
5 alcohol concentration of 0.10% or more by weight of alcohol in
6 the defendant's blood or permits another person who is under the
7 influence of intoxicating liquor, narcotic, hallucinogenic or
8 habit-producing drug to operate a motor vehicle owned by him or
9 in his custody or control or permits another to operate a motor
10 vehicle with a blood alcohol concentration of 0.10% or more by
11 weight of alcohol in the defendant's blood, shall be subject:

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

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

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

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

50 If the driving privilege of any person is under revocation or
51 suspension for a violation of any provision of this Title or Title
52 2C of the New Jersey Statutes at the time of any conviction for a
53 violation of this section, the revocation or suspension period
54 imposed shall commence as of the date of termination

1 of the existing revocation or suspension period. In the case of
2 any person who at the time of the imposition of sentence is less
3 than 17 years of age, the forfeiture, suspension or revocation of
4 the driving privilege imposed by the court under this section shall
5 commence immediately, run through the offender's seventeenth
6 birthday and continue from that date for the period set by the
7 court pursuant to paragraphs (1) through (3) of this subsection. A
8 court that imposes a term of imprisonment under this section
9 may sentence the person so convicted to the county jail, to the
10 workhouse of the county wherein the offense was committed, to
11 an inpatient rehabilitation program or to an Intoxicated Driver
12 Resource Center or other facility approved by the Director of the
13 Division of Alcoholism in the Department of Health; provided
14 that for a third or subsequent offense a person shall not serve a
15 term of imprisonment at an Intoxicated Driver Resource Center
16 as provided in subsection (f).

17 A person who has been convicted of a previous violation of this
18 section need not be charged as a second or subsequent offender in
19 the complaint made against him in order to render him liable to
20 the punishment imposed by this section on a second or subsequent
21 offender, but if the second offense occurs more than 10 years
22 after the first offense, the court shall treat the second conviction
23 as a first offense for sentencing purposes and if a third offense
24 occurs more than 10 years after the second offense, the court
25 shall treat the third conviction as a second offense for sentencing
26 purposes.

27 (b) A person convicted under this section must satisfy the
28 screening, evaluation, referral, program and fee requirements of
29 the Division of Alcoholism's Intoxicated Driving Programs Unit,
30 and of the Intoxicated Driver Resource Centers and a program of
31 alcohol education and highway safety, as prescribed by the
32 Director of the Division of Motor Vehicles. The sentencing court
33 shall inform the person convicted that failure to satisfy such
34 requirements shall result in a mandatory two day term of
35 imprisonment in a county jail and a driver license revocation or
36 suspension and continuation of revocation or suspension until such
37 requirements are satisfied, unless stayed by court order in
38 accordance with Rule 7:8-2 of the N.J. Court Rules, 1969, or
39 R.S.39:5-22. Upon sentencing, the court shall forward to the
40 Bureau of Alcohol Countermeasures within the Intoxicated
41 Driving Programs Unit a copy of a person's conviction record. A
42 fee of \$80.00 shall be payable to the Alcohol Education,
43 Rehabilitation and Enforcement Fund established pursuant to
44 section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
45 Intoxicated Driving Programs Unit.

46 (c) Upon conviction of a violation of this section, the court
47 shall collect forthwith the New Jersey driver's license or licenses
48 of the person so convicted and forward such license or licenses to
49 the Director of the Division of Motor Vehicles. The court shall
50 inform the person convicted that if he is convicted of personally
51 operating a motor vehicle during the period of license suspension
52 imposed pursuant to subsection (a) of this section, he shall, upon
53 conviction, be subject to the penalties established in R.S.39:3-40.
54 The person convicted shall be informed orally and in writing. A

1 person shall be required to acknowledge receipt of that written
2 notice in writing. Failure to receive a written notice or failure to
3 acknowledge in writing the receipt of a written notice shall not
4 be a defense to a subsequent charge of a violation of
5 R.S.39:3-40. In the event that a person convicted under this
6 section is the holder of any out-of-State driver's license, the
7 court shall not collect the license but shall notify forthwith the
8 director, who shall, in turn, notify appropriate officials in the
9 licensing jurisdiction. The court shall, however, revoke the
10 nonresident's driving privilege to operate a motor vehicle in this
11 State, in accordance with this section. Upon conviction of a
12 violation of this section, the court shall notify the person
13 convicted, orally and in writing, of the penalties for a second,
14 third or subsequent violation of this section. A person shall be
15 required to acknowledge receipt of that written notice in
16 writing. Failure to receive a written notice or failure to
17 acknowledge in writing the receipt of a written notice shall not
18 be a defense to a subsequent charge of a violation of this section.

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

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

30 (f) The counties, in cooperation with the Division of
31 Alcoholism and the Division of Motor Vehicles, but subject to the
32 approval of the Division of Alcoholism, shall designate and
33 establish on a county or regional basis Intoxicated Driver
34 Resource Centers. These centers shall have the capability of
35 serving as community treatment referral centers and as court
36 monitors of a person's compliance with the ordered treatment,
37 service alternative or community service. All centers established
38 pursuant to this subsection shall be administered by a certified
39 alcoholism counselor or other professional with a minimum of
40 five years' experience in treatment of alcoholism. All centers
41 shall be required to develop individualized treatment plans for all
42 persons attending the centers; provided that the duration of any
43 ordered treatment or referral shall not exceed one year. It shall
44 be the center's responsibility to establish networks with the
45 community alcohol education, treatment and rehabilitation
46 resources and to receive monthly reports from the referral
47 agencies regarding a person's participation and compliance with
48 the program. Nothing in this subsection shall bar these centers
49 from developing their own education and treatment programs;
50 provided that they are approved by the Division of Alcoholism.

51 Upon a person's failure to report to the initial screening or any
52 subsequent ordered referral, the Intoxicated Driver Resource
53 Center shall promptly notify the sentencing court of the person's
54 failure to comply.

1 Required detention periods at the Intoxicated Driver Resource
2 Centers shall be determined according to the individual
3 treatment classification assigned by the Bureau of Alcohol
4 Countermeasures. Upon attendance at an Intoxicated Driver
5 Resource Center, a person shall be assessed a per diem fee of
6 \$50.00 for the first offender program or a per diem fee of \$75.00
7 for the second offender program, as appropriate.

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

11 The Director of the Division of Alcoholism shall adopt rules
12 and regulations pursuant to the "Administrative Procedure Act,"
13 P.L.1988, c.410 (C.52:14B-1 et seq.), in order to effectuate the
14 purposes of this subsection.¹

15 (cf: P.L. 1993, c.296, s.6)

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

18 2. The municipal court shall revoke the right to operate a
19 motor vehicle of any operator who, after being arrested for a
20 violation of R.S.39:4-50 ¹[or after being involved in an accident
21 resulting in serious bodily injury or death to any person]¹, shall
22 refuse to submit to [the chemical] a test provided for in section 2
23 of P.L.1986, c.142 (C.39:4-50.2) when requested to do so, for six
24 months unless the refusal was in connection with a [subsequent]
25 second offense under [this section] ¹[R.S.39:4-50] this section¹, in
26 which case the revocation period shall be for two years or unless
27 the refusal was in connection with a third or subsequent offense
28 under ¹[R.S.39:4-50] this section¹, in which case the revocation
29 shall be for 10 years.

30 The municipal court shall determine by a preponderance of the
31 evidence whether the arresting officer had probable cause to
32 believe that the person had been driving or was in actual physical
33 control of a motor vehicle on the public highways or quasi-public
34 areas of this State ¹[when an accident resulting in death or
35 serious bodily injury occurred or]¹ while the person was under the
36 influence of intoxicating liquor or a [narcotic, hallucinogenic, or
37 habit-producing drug or marihuana.] ¹[controlled dangerous
38 substance] narcotic, hallucinogenic, or habit-producing drug or
39 marihuana¹; whether the person was placed under arrest, if
40 appropriate; and whether he refused to submit to the test upon
41 request of the officer[.]; and if these elements of the violation
42 are not established, no conviction shall issue. In addition to any
43 other requirements provided by law, a person whose operator's
44 license is revoked for refusing to submit to a [chemical] test shall
45 be referred to an Intoxicated Driver Resource Center established
46 by subsection (f) of R.S.39:4-50 and shall satisfy the same
47 requirements of [a program of alcohol education or rehabilitation
48 pursuant to the provisions of R.S.39:4-50] the center for refusal
49 to submit to a test as provided for in section 2 of P.L.1986, c.142
50 (C.39:4-50.2) in connection with a first, second, third or
51 subsequent offense under ¹[R.S.39:4-50] this section¹ that must
52 be satisfied by a person convicted of a commensurate violation of
53 ¹[R.S.39:4-50] this section¹, or be subject to the same penalties
54 as such a person for failure to do so. The revocation shall be

1 independent of any revocation imposed by virtue of a conviction
2 under the provisions of R.S.39:4-50.

3 In addition to issuing a revocation, the municipal court shall
4 fine a person convicted under this section, a fine of not less than
5 \$250.00 nor more than \$500.00.

6 (cf: P.L.1981, c.537, s.2)

7 3. Section 1 of P.L.1984, c.4 (C.39:4-50.8) is amended to read
8 as follows:

9 1. Upon a conviction of a violation of R.S.39:4-50 or section 2
10 of P.L.1981, c.512 (C.39:4-50.4a), the court shall collect from the
11 defendant a surcharge of \$100.00 in addition to and independently
12 of any fine imposed on that defendant. The court shall forward
13 the surcharge to the Director of the Division of Motor Vehicles
14 who shall deposit \$95.00 of the surcharge into a "Drunk Driving
15 Enforcement Fund" (hereinafter referred to as the "fund"). This
16 fund shall be used to establish a Statewide drunk driving
17 enforcement program to be supervised by the director. The
18 remaining \$5.00 of each surcharge shall be deposited by the
19 director into a separate fund for administrative expenses.

20 A municipality shall be entitled to periodic grants from the
21 "Drunk Driving Enforcement Fund" in amounts representing its
22 proportionate contribution to the fund. A municipality shall be
23 deemed to have contributed to the fund the portion of the
24 surcharge allocated to the fund, collected pursuant to this section
25 if the violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
26 (C.39:4-50.4a) occurred within the municipality and the arrest
27 resulting in conviction was made by the member of a municipal
28 police force. The grants from the fund shall be used by the
29 municipality to increase enforcement of R.S.39:4-50 by
30 subsidizing additional law enforcement patrols and through other
31 measures approved by the director. The Division of State Police,
32 interstate law enforcement agencies and county law enforcement
33 agencies shall be entitled to periodic grants from the fund in
34 amounts representing their proportionate contribution to the
35 fund. The Division of State Police or county or interstate law
36 enforcement agency shall be deemed to have contributed to
37 the fund the portion of the surcharge allocated to the fund
38 collected pursuant to this section if the arrest resulting in a
39 conviction was made by a member of the Division of State Police
40 or county or interstate law enforcement agency. The grants from
41 the fund shall be used by the Division of State Police or county or
42 interstate law enforcement agency to increase enforcement of
43 R.S.39:4-50 by subsidizing additional law enforcement patrols and
44 through other measures approved by the director.

45 The surcharge described herein shall not be considered a fine,
46 penalty or forfeiture to be distributed pursuant to R.S.39:5-41.

47 The director shall promulgate rules and regulations in order to
48 effectuate the purposes of this section.

49 (cf: P.L.1984, c.4, s.1)

50 14. R.S. 39:5-25 is amended to read as follows:

51 39:5-25. Any [constable, sheriff's officer, police officer,
52 peace officer, or the director] law enforcement officer may,
53 without a warrant, arrest any person violating in his presence any
54 provision of chapter 3 of this Title, or any person, other than a

1 motorman or person having control of a street car or auto bus,
2 running upon a route approved by the Board of Public Utilities,
3 violating in his presence any provision of chapter 4 of this Title.
4 A law enforcement officer may arrest without a warrant any
5 person who the officer has probable cause to believe has operated
6 a motor vehicle in violation of R.S.39:4-50 or section 5 of P.L.
7 1990, c. 103 (C.39:4-10.13), regardless of whether the suspected
8 violation occurs in the officer's presence. The exemption from
9 arrest of a motorman or person having control of a street car or
10 auto bus, as conferred herein, shall not operate to prevent his
11 arrest, however, for a violation of R.S.39:4-50. The arresting
12 officer shall bring any person so arrested before any judge of the
13 municipal court of the municipality wherein the offense is
14 committed, or before the director at any place designated as his
15 office. If the arrest is for a violation of R.S.39:4-50, the
16 arresting officer may, if no judge, clerk or deputy clerk is
17 available, detain the person arrested, either in any police station,
18 lockup or other place maintained by any municipality for the
19 detention of offenders or in the common jail of the county, for
20 such reasonable time as will permit the arresting officer to
21 obtain a warrant for the offender's further detention, which
22 temporary detention shall not exceed 24 hours from the time of
23 the arrest. If the arrest is for a violation of any other provision
24 of this subtitle, the person arrested shall be detained in the police
25 station or municipal court until the arresting officer makes a
26 complaint and a warrant issues.

27 Any [constable, sheriff's officer, police officer, peace officer,
28 or the director] law enforcement officer may, instead of
29 arresting an offender as herein provided, serve upon him a
30 summons.¹

31 (cf: P.L.1983, c. 563, s.1)

32 ¹[4.] ²This act shall take effect immediately.

33
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36
37 Permits police officer at accident resulting in death or injury to
38 test motor vehicle operator for alcohol.

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen CATANIA and STUHLTRAGER

1 AN ACT concerning refusal to take a test when arrested for
2 driving while under the influence of liquor or drugs, amending
3 P.L.1966, c.142, P.L.1981, c.512 and P.L.1984, c.4.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

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

9 2. (a) Any person who operates a motor vehicle on any public
10 road, street or highway or quasi-public area in this State shall be
11 deemed to have given his consent to the taking of samples of his
12 breath for the purpose of making chemical tests to determine the
13 content of alcohol in his blood; provided, however, that the taking
14 of samples is made in accordance with the provisions of this act
15 and at the request of a police officer who has reasonable grounds
16 to believe that such person has been operating a motor vehicle in
17 violation of the provisions of R.S.39:4-50 or has been operating a
18 motor vehicle which was involved in an accident resulting in
19 serious bodily injury or death to any person. As used in this
20 section, "serious bodily injury" means bodily injury which creates
21 a substantial risk of death or which causes serious, permanent
22 disfigurement, protracted loss or impairment of the function of
23 any bodily member or organ.

24 (b) A record of the taking of any such sample, disclosing the
25 date and time thereof, as well as the result of any chemical test,
26 shall be made and a copy thereof, upon his request, shall be
27 furnished or made available to the person so tested.

28 (c) In addition to the samples taken and tests made at the
29 direction of a police officer hereunder, the person tested shall be
30 permitted to have such samples taken and chemical tests of his
31 breath, urine or blood made by a person or physician of his own
32 selection.

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

35 (e) No chemical test, as provided in this section, or specimen
36 necessary thereto, may be made or taken forcibly and against
37 physical resistance thereto by the defendant. The police officer
38 shall, however, inform the person arrested of the consequences of
39 refusing to submit to such test in accordance with section 2 of
40 this amendatory and supplementary act. A standard statement,
41 prepared by the director, shall be read by the police officer to
42 the person under arrest.

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

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

Matter underlined thus is new matter.

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

3 2. The municipal court shall revoke the right to operate a
4 motor vehicle of any operator who, after being arrested for a
5 violation of R.S.39:4-50 or after being involved in an accident
6 resulting in serious bodily injury or death to any person, shall
7 refuse to submit to [the chemical] a test provided for in section 2
8 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six
9 months unless the refusal was in connection with a [subsequent]
10 second offense under [this section] R.S.39:4-50, in which case the
11 revocation period shall be for two years or unless the refusal was
12 in connection with a third or subsequent offense under
13 R.S.39:4-50, in which case the revocation shall be for 10 years.

14 The municipal court shall determine by a preponderance of the
15 evidence whether the arresting officer had probable cause to
16 believe that the person had been driving or was in actual physical
17 control of a motor vehicle on the public highways or quasi-public
18 areas of this State when an accident resulting in death or serious
19 bodily injury occurred or while the person was under the influence
20 of intoxicating liquor or a [narcotic, hallucinogenic, or
21 habit-producing drug or marihuana,] controlled dangerous
22 substance; whether the person was placed under arrest, if
23 appropriate; and whether he refused to submit to the test upon
24 request of the officer[.]; and if these elements of the violation
25 are not established, no conviction shall issue. In addition to any
26 other requirements provided by law, a person whose operator's
27 license is revoked for refusing to submit to a [chemical] test shall
28 be referred to an Intoxicated Driver Resource Center established
29 by subsection (f) of R.S.39:4-50 and shall satisfy the same
30 requirements of [a program of alcohol education or rehabilitation
31 pursuant to the provisions of R.S.39:4-50] the center for refusal
32 to submit to a test as provided for in section 2 of P.L.1966, c.142
33 (C.39:4-50.2) in connection with a first, second, third or
34 subsequent offense under R.S.39:4-50 that must be satisfied by a
35 person convicted of a commensurate violation of R.S.39:4-50, or
36 be subject to the same penalties as such a person for failure to do
37 so. The revocation shall be independent of any revocation
38 imposed by virtue of a conviction under the provisions of
39 R.S.39:4-50.

40 In addition to issuing a revocation, the municipal court shall
41 fine a person convicted under this section, a fine of not less than
42 \$250.00 nor more than \$500.00.

43 (cf: P.L.1981, c.537, s.2)

44 3. Section 1 of P.L.1984, c.4 (C.39:4-50.8) is amended to read
45 as follows:

46 1. Upon a conviction of a violation of R.S.39:4-50 or section 2
47 of P.L.1981, c.512 (C.39:4-50.4a), the court shall collect from the
48 defendant a surcharge of \$100.00 in addition to and independently
49 of any fine imposed on that defendant. The court shall forward
50 the surcharge to the Director of the Division of Motor Vehicles
51 who shall deposit \$95.00 of the surcharge into a "Drunk Driving
52 Enforcement Fund" (hereinafter referred to as the "fund"). This
53 fund shall be used to establish a Statewide drunk driving
54 enforcement program to be supervised by the director. The

1 remaining \$5.00 of each surcharge shall be deposited by the
2 director into a separate fund for administrative expenses.

3 A municipality shall be entitled to periodic grants from the
4 "Drunk Driving Enforcement Fund" in amounts representing its
5 proportionate contribution to the fund. A municipality shall be
6 deemed to have contributed to the fund the portion of the
7 surcharge allocated to the fund, collected pursuant to this section
8 if the violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
9 (C.39:4-50.4a) occurred within the municipality and the arrest
10 resulting in conviction was made by the member of a municipal
11 police force. The grants from the fund shall be used by the
12 municipality to increase enforcement of R.S.39:4-50 by
13 subsidizing additional law enforcement patrols and through other
14 measures approved by the director. The Division of State Police,
15 interstate law enforcement agencies and county law enforcement
16 agencies shall be entitled to periodic grants from the fund in
17 amounts representing their proportionate contribution to the
18 fund. The Division of State Police or county or interstate law
19 enforcement agency shall be in deemed to have contributed to
20 the fund the portion of the surcharge allocated to the fund
21 collected pursuant to this section if the arrest resulting in a
22 conviction was made by a member of the Division of State Police
23 or county or interstate law enforcement agency. The grants from
24 the fund shall be used by the Division of State Police or county or
25 interstate law enforcement agency to increase enforcement of
26 R.S.39:4-50 by subsidizing additional law enforcement patrols and
27 through other measures approved by the director.

28 The surcharge described herein shall not be considered a fine,
29 penalty or forfeiture to be distributed pursuant to R.S.39:5-41.

30 The director shall promulgate rules and regulations in order to
31 effectuate the purposes of this section.

32 (cf: P.L.1984, c.4, s.1)

33 4. This act shall take effect immediately.

34

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STATEMENT

38 This bill permits a police officer at the scene of an accident
39 resulting in death or serious bodily injury to have the operator of
40 any vehicle involved in the accident tested for the presence of
41 alcohol in the blood.

42 The bill also changes the penalties for refusing to submit to a
43 test to determine the presence of alcohol in the blood so that
44 those penalties more closely approximate the penalties for
45 conviction of driving while under the influence of intoxicating
46 liquor or drugs (R.S.39:4-50). The additional penalties established
47 in the bill include a license suspension of 10 years if the refusal
48 was in connection with a third or subsequent offense of driving
49 while under the influence of intoxicating liquor or drugs and a
50 referral to an Intoxicated Driver Resource Center.

51 Finally, the bill requires that persons who refuse to submit to a
52 test for the presence of alcohol in the blood pay \$100 into the
53 "Drunk Driving Enforcement Fund," established in section 1 of
54 P.L.1984, c.4 (C.39:4-50.8).

1

2

3 **Permits police officer at accident resulting in death or injury to**

4 **test motor vehicle operator for alcohol.**

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 763

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 21, 1994

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The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 763.

This bill in its original form permitted a police officer at the scene of an accident resulting in death or serious bodily injury to have the operator of any vehicle involved in the accident tested for the presence of alcohol in the blood and changed the penalties for refusing to submit to a test. The committee amended the bill by deleting these provisions of the bill and adding a new section 1 and 4.

Section 1 of the bill amends R.S.39:4-50 to provide that when a motor vehicle operator has been involved in an accident which results in death, bodily injury or property damage the police officer shall consider that fact in determining whether there are reasonable grounds to believe that a person was violating R.S.39:4-50, driving under the influence. Section 4 of bill amends R.S.39:5-25 to authorize law enforcement officers to arrest, without a warrant and upon probable cause, any person who the officer believes has violated R.S.39:4-50, driving under the influence, regardless of whether the violation occurs in the officer's presence.

The committee also amended section 2 of the bill to correct internal statutory references. Section 3 of the bill which requires that persons who refuse to submit to a test for the presence of alcohol in the blood pay \$100 into the "Driving Drunk Enforcement Fund," was not amended.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

ASSEMBLY AIL COMMITTEE

AMENDMENTS

to

ASSEMBLY, No. 763

(Sponsored by Assemblymen Catania and Stuhltrager)



REPLACE TITLE TO READ:

AN ACT concerning [refusal to take a test when arrested for] driving while under the influence of liquor or drugs, amending ¹[P.L.1986, c.142] R.S. 39:4-50¹, P.L.1981, c.512 ¹[and] ¹P.L.1984, c.4 ¹and R.S.39:5-25¹. ✓

DELETE SECTION 1 IN ITS ENTIRETY.

INSERT NEW SECTION 1 TO READ:

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

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

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

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

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

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

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

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

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

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

section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

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

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

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

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

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

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

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

(cf: P.L. 1993, c.296, s.6)

REPLACE SECTION 2 TO READ:

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

2. The municipal court shall revoke the right to operate a motor vehicle of any operator who, after being arrested for a violation of R.S.39:4-50 ¹[or after being involved in an accident resulting in serious bodily injury or death to any person]¹, shall refuse to submit to [the chemical] a test provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six months unless the refusal was in connection with a [subsequent] second offense under [this section] ¹[R.S.39:4-50] this section¹, in which case the revocation period shall be for two years or unless the refusal was in connection with a third or subsequent offense under ¹[R.S.39:4-50] this section¹, in which case the revocation shall be for 10 years.

The municipal court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State ¹[when an accident resulting in death or serious bodily injury occurred or]¹ while the person was under the influence of intoxicating liquor or a [narcotic, hallucinogenic, or habit-producing drug or marihuana.] ¹[controlled dangerous substance] narcotic, hallucinogenic, or habit-producing drug or marihuana¹; whether the person was placed under arrest, if appropriate; and whether he refused to submit to the test upon request of the officer[.]; and if these elements of the violation are not established, no conviction shall issue. In addition to any other requirements provided by law, a person whose operator's license is revoked for refusing to submit to a [chemical] test shall be referred to an Intoxicated Driver Resource Center established by subsection (f) of R.S.39:4-50 and shall satisfy the same requirements of [a program of alcohol education or rehabilitation pursuant to the provisions of R.S.39:4-50] the center for refusal to submit to a test as provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with a first, second, third or subsequent offense under ¹[R.S.39:4-50] this section¹ that must be satisfied by a person convicted of a commensurate violation of ¹[R.S.39:4-50] this section¹, or be subject to the same penalties as such a person for failure to do so. The revocation shall be independent of any revocation imposed by virtue of a conviction under the provisions of R.S.39:4-50.

In addition to issuing a revocation, the municipal court shall fine a person convicted under this section, a fine of not less than \$250.00 nor more than \$500.00.

(cf: P.L.1981, c.537, s.2)

INSERT NEW SECTION 4 TO READ:

¹4. R.S. 39:5-25 is amended to read as follows:

39:5-25. Any [constable, sheriff's officer, police officer, peace officer, or the director] law enforcement officer may, without a warrant, arrest any person violating in his presence any provision of chapter 3 of this Title, or any person, other than a motorman or person having control of a street car or auto bus, running upon a route approved by the Board of Public Utilities, violating in his presence any provision of chapter 4 of this Title. A law enforcement officer may arrest without a warrant any person who the officer has probable cause to believe has operated a motor vehicle in violation of R.S.39:4-50 or section 5 of P.L. 1990, c. 103 (C.39:3-10.13), regardless of whether the suspected violation occurs in the officer's presence. The exemption from arrest of a motorman or person having control of a street car or auto bus, as conferred herein, shall not operate to prevent his arrest, however, for a violation of R.S. 39:4-50. The arresting officer shall bring any person so arrested before any judge of the municipal court of the municipality wherein the offense is committed, or before the director at any place designated as his office. If the arrest is for a violation of R.S. 39:4-50, the arresting officer may, if no judge, clerk or deputy clerk is available, detain the person arrested, either in any police station, lockup or other place maintained by any municipality for the detention of offenders or in the common jail of the county, for such reasonable time as will permit the arresting officer to obtain a warrant for the offender's further detention, which temporary detention shall not exceed 24 hours from the time of the arrest. If the arrest is for a violation of any other provision of this subtitle, the person arrested shall be detained in the police station or municipal court until the arresting officer makes a complaint and a warrant issues.

Any [constable, sheriff's officer, police officer, peace officer, or the director] law enforcement officer may, instead of arresting an offender as herein provided, serve upon him a summons.

(cf: P.L.1983, c. 563, s. 1)¹

RENUMBER SECTION 4 AS 5