

12:7-34.19

**LEGISLATIVE HISTORY CHECKLIST**  
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(Boating while intoxicated)

**NJSA:** 12:7-34.19

**LAWS OF:** 1993 **CHAPTER:** 230

**BILL NO:** S1526

**SPONSOR(S)** Cafiero

**DATE INTRODUCED:** February 1, 1993

**COMMITTEE:** **ASSEMBLY:** ---

**SENATE:** Judiciary

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

**DATE OF PASSAGE:** **ASSEMBLY:** June 21, 1993

**SENATE:** May 13, 1993

**DATE OF APPROVAL:** August 6, 1993

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

See newspaper clipping--attached.

KBG:pp

[FIRST REPRINT]  
SENATE, No. 1526

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1993

By Senators CAFIERO, CONNORS, Palaia and Schluter

1 AN ACT concerning the operation of certain vessels, amending  
2 P.L.1954, c.236 and P.L.1952, c.157 and repealing section 6  
3 P.L.1986, c.39.

4

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

7 1. Section 19 of P.L.1954, c.236 (C.12:7-34.19) is amended to  
8 read as follows:

9 19. a. No person shall operate a vessel on non-tidal waters  
10 while under the influence of intoxicating liquor, a narcotic,  
11 hallucinogenic, or habit-producing drug or with a blood alcohol  
12 concentration of 0.10% or more by weight of alcohol.

13 No person shall permit another who is under the influence of  
14 intoxicating liquor, a narcotic, hallucinogenic, or habit-producing  
15 drug or who has a blood alcohol concentration of 0.10% or more  
16 by weight of alcohol to operate any vessel owned by the person or  
17 in his custody or control.

18 As used in this section, "vessel" means a power vessel as  
19 defined in section 1 of P.L.1954, c.236 (C.12:7-34.1) or a vessel  
20 which is 12 feet or greater in length.

21 Any person who violates this section shall be subject to the  
22 following:

23 (1) For a first offense, to a fine of not less than \$250.00 nor  
24 more than \$400.00; and to the revocation of the right to operate  
25 a vessel on the waters of this State for a period of [not less than  
26 six] 12 months [nor more than one year] from the date of  
27 conviction and to the forfeiting of the right to operate a motor  
28 vehicle over the highways of this State for a period of three  
29 months.

30 (2) For a second offense, to a fine of not less than \$500.00 nor  
31 more than \$1,000.00; to the performance of community service  
32 for a period of 30 days, in the form and on the terms as the court  
33 deems appropriate under the circumstances; to imprisonment for  
34 a term of not less than 48 hours nor more than 90 days, which  
35 shall not be suspended or served on probation; and to the  
36 revocation of the right to operate a vessel on the waters of this  
37 State for a period of two years after the date of conviction and  
38 to the forfeiting of the right to operate a motor vehicle over the  
39 highways of this State for a period of six months.

40 (3) For a third or subsequent offense, to a fine of \$1,000.00; to  
41 imprisonment for a term of not less than 180 days, except that  
42 the court may lower this term for each day not exceeding 90 days

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:  
Senate SJU committee amendments adopted March 18, 1993.

1 during which the person performs community service, in the form  
2 and on the terms as the court deems appropriate under the  
3 circumstances; and to the revocation of the right to operate a  
4 vessel on the waters of this State for a period of 10 years after  
5 the date of conviction and to the forfeiting of the right to  
6 operate a motor vehicle over the highways of this State for a  
7 period of two years.

8 Upon conviction of a violation of this section, the court shall  
9 collect forthwith the New Jersey driver's license or licenses of  
10 the person so convicted and forward such license or licenses to  
11 the Director of the Division of Motor Vehicles. In the event that  
12 a person convicted under this section is the holder of any  
13 out-of-state motor vehicle driver's license, the court shall not  
14 collect the license but shall immediately notify the Director of  
15 the Division of Motor Vehicles, who shall, in turn, notify  
16 appropriate officials in the licensing jurisdiction. The court shall,  
17 however, revoke the nonresident's driving privilege to operate a  
18 motor vehicle in this State.

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

29 c. If a court imposes a term of imprisonment under this  
30 section, the person may be sentenced to the county jail, to the  
31 workhouse of the county where the offense was committed, or to  
32 an inpatient rehabilitation program approved by the Director of  
33 the Division of Alcoholism and Drug Abuse in the Department of  
34 Health.

35 d. <sup>1</sup>[If the right to operate a vessel is under revocation or  
36 suspension for a violation of a provision of this title at the time  
37 of a conviction for a violation of this section, the revocation  
38 period imposed under this section shall commence as of the date  
39 of termination of the existing revocation or suspension period.] In  
40 the case of any person who at the time of the imposition of  
41 sentence is less than 17 years of age, the period of the suspension  
42 of driving privileges authorized herein, including a suspension of  
43 the privilege of operating a motorized bicycle, shall commence  
44 on the day the sentence is imposed and shall run for a period as  
45 fixed by the court of not less than three months after the day the  
46 person reaches the age of 17 years. If the driving privilege of any  
47 person is under revocation, suspension, or postponement for a  
48 violation of any provision of this title or Title 39 of the Revised  
49 Statutes at the time of any conviction of any offense defined in  
50 this section, the revocation, suspension, or postponement period  
51 imposed herein shall commence as of the date of termination of  
52 the existing revocation, suspension or postponement. A second  
53 offense shall result in the suspension or postponement of the  
54 person's right to operate a motor vehicle for six months. A third

1 or subsequent offense shall result in the suspension or  
2 postponement of the person's right to operate a motor vehicle  
3 for two years. The court before whom any person is convicted of  
4 or adjudicated delinquent for a violation shall collect forthwith  
5 the New Jersey driver's license or licenses of the person and  
6 forward such license or licenses to the Director of the Division of  
7 Motor Vehicles along with a report indicating the first and last  
8 day of the suspension or postponement period imposed by the  
9 court pursuant to this section. If the court is for any reason  
10 unable to collect the license or licenses of the person, the court  
11 shall cause a report of the conviction or adjudication of  
12 delinquency to be filed with the Director. That report shall  
13 include the complete name, address, date of birth, eye color, and  
14 sex of the person and shall indicate the first and last day of the  
15 suspension or postponement period imposed by the court pursuant  
16 to this section. The court shall inform the person orally and in  
17 writing that if the person is convicted of personally operating a  
18 motor vehicle during the period of license suspension or  
19 postponement imposed pursuant to this section, the person shall,  
20 upon conviction, be subject to the penalties set forth in R.S.  
21 39:3-40. A person shall be required to acknowledge receipt of  
22 the written notice in writing. Failure to receive a written notice  
23 or failure to acknowledge in writing the receipt of a written  
24 notice shall not be a defense to a subsequent charge of a violation  
25 of R.S. 39:3-40. If the person is the holder of a driver's license  
26 from another jurisdiction, the court shall not collect the license  
27 but shall notify forthwith the Director who shall notify the  
28 appropriate officials in the licensing jurisdiction. The court shall,  
29 however, in accordance with the provisions of this section, revoke  
30 the person's non-resident driving privilege in this State.<sup>1</sup>

31 e. In addition to any other requirements provided by law, a  
32 person convicted under this section shall satisfy the screening,  
33 evaluation, referral <sup>1</sup>[and]<sup>1</sup> program <sup>1</sup>and fee<sup>1</sup> requirements of  
34 the <sup>1</sup>[Bureau of Alcohol Countermeasures in the Division of  
35 Alcoholism and Drug Abuse in the Department of Health] Division  
36 of Alcoholism's Intoxicated Driving Programs Unit<sup>1</sup>. A fee of  
37 <sup>1</sup>[\$40.00] \$80.00<sup>1</sup> shall be payable to the Alcohol Education,  
38 Rehabilitation and Enforcement Fund established under section 3  
39 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order  
40 to defray the costs of the screening, evaluation and referral by  
41 the <sup>1</sup>[Bureau of Alcohol Countermeasures and the cost of an  
42 education or rehabilitation program] Intoxicated Driving  
43 Programs Unit<sup>1</sup>. Failure to satisfy this requirement shall result in  
44 the immediate forfeiture of the right to operate a vessel on the  
45 waters of this State or the continuation of revocation until the  
46 requirements are satisfied.

47 (cf: P.L.1986, c.39, s.1)

48 2. Section 3 of P.L.1952, c.157 (C.12:7-46) is amended to read  
49 as follows:

50 3. a. No person shall operate a vessel on tidal waters while  
51 under the influence of intoxicating liquor, a narcotic,  
52 hallucinogenic, or habit-producing drug or with a blood alcohol  
53 concentration of 0.10% or more by weight of alcohol. No person  
54 shall permit another who is under the influence of intoxicating

1 liquor, a narcotic, hallucinogenic or habit-producing drug, or who  
2 has a blood alcohol concentration of 0.10% by weight of alcohol,  
3 to operate any vessel owned by the person or in his custody or  
4 control.

5 As used in this section, "vessel" means a power vessel as  
6 defined by section 2 of P.L.1962, c.73 (C.12:7-34.37) or a vessel  
7 which is 12 feet or greater in length.

8 A person who violates this section shall be subject to the  
9 following:

10 (1) For a first offense, to a fine of not less than \$250.00 nor  
11 more than \$400.00; and to the revocation of the right to operate  
12 a vessel on the waters of this State for a period of [not less than  
13 six] 12 months [nor more than one year] from the date of  
14 conviction and to the forfeiting of the right to operate a motor  
15 vehicle over the highways of this State for a period of three  
16 months.

17 (2) For a second offense, to a fine of not less than \$500.00 nor  
18 more than \$1,000.00; to the performance of community service  
19 for a period of 30 days, in the form and on the terms as the court  
20 deems appropriate under the circumstances; and to imprisonment  
21 for a term of not less than 48 hours nor more than 90 days, which  
22 shall not be suspended or served on probation; and to the  
23 revocation of the right to operate a vessel on the waters of this  
24 State for a period of two years after the date of conviction and  
25 to the forfeiting of the right to operate a motor vehicle over the  
26 highways of this State for a period of six months.

27 (3) For a third or subsequent offense, to a fine of \$1,000.00; to  
28 imprisonment for a term of not less than 180 days, except that  
29 the court may lower this term for each day not exceeding 90 days  
30 during which the person performs community service, in the form  
31 and on the terms as the court deems appropriate under the  
32 circumstances; and to the revocation of the right to operate a  
33 vessel on the waters of this State for a period of 10 years from  
34 the date of conviction and to the forfeiting of the right to  
35 operate a motor vehicle over the highways of this State for a  
36 period of two years.

37 Upon conviction of a violation of this section, the court shall  
38 collect forthwith the New Jersey driver's license or licenses of  
39 the person so convicted and forward such license or licenses to  
40 the Director of the Division of Motor Vehicles. In the event that  
41 a person convicted under this section is the holder of any  
42 out-of-state motor vehicle driver's license, the court shall not  
43 collect the license but shall notify forthwith the Director of the  
44 Division of Motor Vehicles, who shall, in turn, notify appropriate  
45 officials in the licensing jurisdiction. The court shall, however,  
46 revoke the nonresident's driving privilege to operate a motor  
47 vehicle in this State.

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

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

4 c. If a court imposes a term of imprisonment under this  
5 section, the person may be sentenced to the county jail, to the  
6 workhouse of the county where the offense was committed, or to  
7 an inpatient rehabilitation program approved by the Director of  
8 the Division of Motor Vehicles and the Director of the Division of  
9 Alcoholism and Drug Abuse in the Department of Health.

10 d. <sup>1</sup>[If the right to operate a vessel is under revocation or  
11 suspension for a violation of provision of this title at the time of  
12 a conviction for a violation of this section, the revocation period  
13 imposed under this section shall commence as of the date of  
14 termination of the existing revocation or suspension period.] In  
15 the case of any person who at the time of the imposition of  
16 sentence is less than 17 years of age, the period of the suspension  
17 of driving privileges authorized herein, including a suspension of  
18 the privilege of operating a motorized bicycle, shall commence  
19 on the day the sentence is imposed and shall run for a period as  
20 fixed by the court of not less than three months after the day the  
21 person reaches the age of 17 years. If the driving privilege of any  
22 person is under revocation, suspension, or postponement for a  
23 violation of any provision of this title or Title 39 of the Revised  
24 Statutes at the time of any conviction of any offense defined in  
25 this section, the revocation, suspension, or postponement period  
26 imposed herein shall commence as of the date of termination of  
27 the existing revocation, suspension or postponement. A second  
28 offense shall result in the suspension or postponement of the  
29 person's right to operate a motor vehicle for six months. A third  
30 or subsequent offense shall result in the suspension or  
31 postponement of the person's right to operate a motor vehicle  
32 for two years. The court before whom any person is convicted of  
33 or adjudicated delinquent for a violation shall collect forthwith  
34 the New Jersey driver's license or licenses of the person and  
35 forward such license or licenses to the Director of the Division of  
36 Motor Vehicles along with a report indicating the first and last  
37 day of the suspension or postponement period imposed by the  
38 court pursuant to this section. If the court is for any reason  
39 unable to collect the license or licenses of the person, the court  
40 shall cause a report of the conviction or adjudication of  
41 delinquency to be filed with the Director. That report shall  
42 include the complete name, address, date of birth, eye color, and  
43 sex of the person and shall indicate the first and last day of the  
44 suspension or postponement period imposed by the court pursuant  
45 to this section. The court shall inform the person orally and in  
46 writing that if the person is convicted of personally operating a  
47 motor vehicle during the period of license suspension or  
48 postponement imposed pursuant to this section, the person shall,  
49 upon conviction, be subject to the penalties set forth in  
50 R.S.39:3-40. A person shall be required to acknowledge receipt  
51 of the written notice in writing. Failure to receive a written  
52 notice or failure to acknowledge in writing the receipt of a  
53 written notice shall not be a defense to a subsequent charge of a  
54 violation of R.S. 39:3-40. If the person is the holder of a driver's

1 license from another jurisdiction, the court shall not collect the  
2 license but shall notify forthwith the Director who shall notify  
3 the appropriate officials in the licensing jurisdiction. The court  
4 shall, however, in accordance with the provisions of this section,  
5 revoke the person's non-resident driving privilege in this State.<sup>1</sup>

6 e. In addition to any other requirements provided by law, a  
7 person convicted under this section shall satisfy the screening,  
8 evaluation, referral <sup>1[and]</sup><sup>1</sup> program <sup>1and fee</sup><sup>1</sup> requirements of  
9 the <sup>1[Bureau of Alcohol Countermeasures in the Division of</sup>  
10 <sup>Alcoholism and Drug Abuse in the Department of Health] Division</sup>  
11 <sup>of Alcoholism's Intoxicated Driving Programs Unit</sup><sup>1</sup>. A fee of  
12 <sup>1[\$40.00] \$80.00</sup><sup>1</sup> shall be payable to the Alcohol Education,  
13 Rehabilitation and Enforcement Fund established under section 3  
14 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order  
15 to defray the costs of the screening, evaluation and referral by  
16 the <sup>1[Bureau of Alcohol Countermeasures and the cost of an</sup>  
17 <sup>education or rehabilitation program] Intoxicated Driving</sup>  
18 <sup>Programs Unit</sup><sup>1</sup>. Failure to satisfy this requirement shall result in  
19 the immediate forfeiture of the right to operate a vessel on the  
20 waters of this State or the continuation of revocation until the  
21 requirements are satisfied.

22 (cf: P.L.1986, c.39, s.4)

23 3. Section 6 of P.L.1986, c.39 (C.12:7-54) is repealed.

24 4. This act shall take effect on the first day of the sixth month  
25 after enactment.

26  
27  
28  
29  
30 Upgrades penalties for boating while intoxicated.

1 this section need not be charged as a second or subsequent  
2 offender in the complaint made against him in order to render  
3 him liable to the punishment imposed by this section against a  
4 second or subsequent offender. If a second offense occurs more  
5 than 10 years after the first offense, the court shall treat a  
6 second conviction as a first offense for sentencing purposes and,  
7 if a third offense occurs more than 10 years after the second  
8 offense, the court shall treat a third conviction as a second  
9 offense for sentencing purposes.

10 c. If a court imposes a term of imprisonment under this  
11 section, the person may be sentenced to the county jail, to the  
12 workhouse of the county where the offense was committed, or to  
13 an inpatient rehabilitation program approved by the Director of  
14 the Division of Motor Vehicles and the Director of the Division of  
15 Alcoholism and Drug Abuse in the Department of Health.

16 d. If the right to operate a vessel is under revocation or  
17 suspension for a violation of provision of this title at the time of  
18 a conviction for a violation of this section, the revocation period  
19 imposed under this section shall commence as of the date of  
20 termination of the existing revocation or suspension period.

21 e. In addition to any other requirements provided by law, a  
22 person convicted under this section shall satisfy the screening,  
23 evaluation, referral and program requirements of the Bureau of  
24 Alcohol Countermeasures in the Division of Alcoholism and Drug  
25 Abuse in the Department of Health. A fee of \$40.00 shall be  
26 payable to the Alcohol Education, Rehabilitation and  
27 Enforcement Fund established under section 3 of P.L.1983, c.531  
28 (C.26:2B-32), by the convicted person in order to defray the costs  
29 of the screening, evaluation and referral by the Bureau of Alcohol  
30 Countermeasures and the cost of an education or rehabilitation  
31 program. Failure to satisfy this requirement shall result in the  
32 immediate forfeiture of the right to operate a vessel on the  
33 waters of this State, or the continuation of revocation until the  
34 requirements are satisfied.

35 (cf: P.L.1986, c.39, s.4)

36 3. Section 6 of P.L.1986, c.39 (C.12:7-54) is repealed.

37 4. This act shall take effect on the first day of the sixth month  
38 after enactment.

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40

41 *Sponsor's* STATEMENT

42

43 In 1991, there were 182 arrests of power boat operators for  
44 boating while intoxicated, according to the State Police. This bill  
45 combats the serious problem of drunken boating in two ways: it  
46 doubles the period of suspension of the operator's boating license  
47 for a first offense and also provides for suspension of his motor  
48 vehicle driver's license.

49 The current six-month minimum suspension of a boating license  
50 for a first offense of drunk boating is extended to 12 months.  
51 The current penalty is meaningless if a boater's conviction comes  
52 at the end of the summer and he is not planning to take his vessel  
53 out again until the following spring.

54 The bill also requires the suspension of the motor vehicle

1 driver's license of a person convicted of operating a power vessel  
2 or a boat that is 12 feet or longer on the tidal or non-tidal waters  
3 of the State while under the influence of alcohol or drugs. A first  
4 offense would result in a three-month suspension, a second  
5 offense in a six-month suspension, and a third or subsequent  
6 offense in a two-year suspension.

7 In addition, the bill repeals a section of the boating law  
8 concerning the presumptions arising from the percentage of  
9 alcohol in a person's blood. The section is being repealed in light  
10 of current scientific studies which demonstrate significant  
11 impairment of visual, cognitive, and psychomotor faculties  
12 necessary for the safe operation of motor vehicles at levels well  
13 below the current 0.10% blood alcohol concentration. This will  
14 allow the finder of fact to give full weight to the blood alcohol  
15 concentration level in light of these scientific studies in  
16 determining whether a violation has occurred. The repeal  
17 parallels the repeal of a similar provision that applied to such  
18 offenses when committed by drivers of commercial vehicles.

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23 Upgrades penalties for boating while intoxicated.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 1526**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 18, 1993

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1526.

S1526 would increase the penalties for operating a vessel while under the influence of drugs or alcohol. S-1526 would increase the present six-month minimum suspension of a boating license for a first offense to 12 months. S1526 would also require the suspension of the motor vehicle driver's license of a person convicted of drunk boating. For a first offense, the period of the motor vehicle license suspension would be three months; for a second offense, six months and for any subsequent offense, a two year suspension.

In addition, S1526 would repeal N.J.S.A.12:7-54 which establishes certain presumptions with regard to the percentage of alcohol in a person's blood and the offense of a drunk boating. A similar statute applicable to the offense of drunk driving was repealed in 1990.

The committee made technical amendments to clarify the procedures to be followed when a person's drivers license is suspended in connection with a conviction for drunk boating. These amendments also update the statutes amended by S1526 to reflect the present program administered by the Division of Alcoholism for the treatment of drunk drivers.