

CHAPTER 80

AN ACT concerning operating a vessel while under the influence and amending P.L.1952, c.157 and P.L.1986, c.39.

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

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

C.12:7-46 Penalties for operating vessel under the influence.

3. a. No person shall operate a vessel on the waters of this State while under the influence of intoxicating liquor, a narcotic, hallucinogenic, or habit-producing drug or with a blood alcohol concentration of 0.08% or more by weight of alcohol. No person shall permit another who is under the influence of intoxicating liquor, a narcotic, hallucinogenic or habit-producing drug, or who has a blood alcohol concentration of 0.08% by weight of alcohol, to operate any vessel owned by the person or in his custody or control.

As used in this section, "vessel" means a power vessel as defined by section 2 of P.L.1995, c.401 (C.12:7-71) or a vessel which is 12 feet or greater in length.

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

(1) For a first offense:

(i) if the person's blood alcohol concentration is 0.08% or higher but less than 0.10%, or the person operates a vessel while under the influence of intoxicating liquor, or the person permits another person who is under the influence of intoxicating liquor to operate a vessel owned by him or in his custody or control or permits another person with a blood alcohol concentration of 0.08% or higher but less than 0.10% to operate a vessel, to a fine of not less than \$250 nor more than \$400; and to the revocation of the privilege to operate a vessel on the waters of this State for a period of one year from the date of conviction and to the forfeiting of the privilege to operate a motor vehicle over the highways of this State for a period of three months;

(ii) if the person's blood alcohol concentration is 0.10% or higher, or the person operates a vessel while under the influence of a narcotic, hallucinogenic or habit-producing drug, or the person permits another person who is under the influence of a narcotic, hallucinogenic or habit-producing drug to operate a vessel owned by him or in his custody or control, or permits another person with a blood alcohol concentration of 0.10% or more to operate a vessel, to a fine of not less than \$300 nor more than \$500; and to the revocation of the privilege to operate a vessel on the waters of this State for a period of one year from the date of conviction and to the forfeiting of the privilege to operate a motor vehicle over the highways of this State for a period of not less than seven months nor more than one year.

(2) For a second offense, to a fine of not less than \$500 nor more than \$1,000; to the performance of community service for a period of 30 days, in the form and on the terms as the court deems appropriate under the circumstances; and to imprisonment for a term of not less than 48 hours nor more than 90 days, which shall not be suspended or served on probation; and to the revocation of the privilege to operate a vessel on the waters of this State for a period of two years after the date of conviction and to the forfeiting of the privilege to operate a motor vehicle over the highways of this State for a period of two years.

(3) For a third or subsequent offense, to a fine of \$1,000; to imprisonment for a term of not less than 180 days, except that the court may lower this term for each day not exceeding 90 days during which the person performs community service, in the form and on the terms as the court deems appropriate under the circumstances; and to the revocation of the privilege to operate a vessel on the waters of this State for a period of 10 years from the date of conviction and to the forfeiting of the privilege to operate a motor vehicle over the highways of this State for a period of 10 years.

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 Chief Administrator of the New Jersey Motor Vehicle Commission. In the event that a person convicted under this section is the holder of any out-of-State motor vehicle driver's or vessel operator's license, the court shall not collect the license but shall notify forthwith the Chief Administrator of the New Jersey Motor Vehicle Commission, 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 and the nonresident's privilege to

operate a vessel in this State.

b. 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 against a second or subsequent offender. If a second offense occurs more than 10 years after the first offense, the court shall treat a 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 a third conviction as a second offense for sentencing purposes.

c. If a court imposes a term of imprisonment under this section, the person may be sentenced to the county jail, to the workhouse of the county where the offense was committed, or to an inpatient rehabilitation program approved by the Chief Administrator of the New Jersey Motor Vehicle Commission and the Director of the Division of Alcoholism and Drug Abuse in the Department of Health and Senior Services.

d. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than three months after the day the person reaches the age of 17 years. If the driving or vessel operating privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this title or Title 39 of the Revised Statutes at the time of any conviction of any offense defined in this section, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement. A second offense shall result in the suspension or postponement of the person's privilege to operate a motor vehicle for six months. A third or subsequent offense shall result in the suspension or postponement of the person's privilege to operate a motor vehicle for two years. The court before whom any person is convicted of or adjudicated delinquent for a violation shall collect forthwith the New Jersey driver's license or licenses of the person and forward such license or licenses to the Chief Administrator of the New Jersey Motor Vehicle Commission along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the chief administrator. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle or a vessel during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. A person shall be required to acknowledge receipt of the 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 or section 14 of P.L.1995, c.401 (C.12:7-83). If the person is the holder of a driver's or vessel operator's license from another jurisdiction, the court shall not collect the license but shall notify forthwith the chief administrator who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving or vessel operating privilege, whichever is appropriate, in this State.

e. In addition to any other requirements provided by law, a person convicted under this section shall satisfy the screening, evaluation, referral program and fee requirements of the Division of Alcoholism's Intoxicated Driving Programs Unit. A fee of \$80 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order to defray the costs of the screening, evaluation and referral by the Intoxicated Driving Programs Unit. Failure to satisfy this requirement shall result in the immediate forfeiture of the privilege to operate a vessel on the waters of this State or the continuation of revocation until the requirements are satisfied.

f. In addition to any other requirements provided by law, a person convicted under this section shall be required after conviction to complete a boat safety course from the list approved by the Superintendent of State Police pursuant to section 1 of P.L.1987, c.453 (C.12:7-60), which shall be completed prior to the restoration of the privilege to operate a vessel which may have been revoked or suspended for a violation of the provisions of this section. Failure to satisfy this requirement shall result in the immediate revocation of the privilege to operate a vessel on the waters of this State, or the continuation of revocation until the requirements of this subsection are satisfied.

2. Section 7 of P.L.1986, c.39 (C.12:7-55) is amended to read as follows:

C.12:7-55 Implied consent.

7. a. (1) A person who operates a power vessel or a vessel which is 12 feet or greater in length on the waters of this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood, except that the taking of samples shall be made in accordance with the provisions of P.L.1986, c.39 and at the request of a member of the State Police or a law enforcement officer who has reasonable grounds to believe that the person has been operating a vessel in violation of the provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

(2) Whenever an operator has been involved in an accident resulting in death, bodily injury or property damage, an officer shall consider that fact along with all other facts and circumstances in determining under paragraph (1) of this subsection whether there are reasonable grounds to believe a person is operating a vessel in violation of the provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

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

c. In addition to the samples taken and tests made at the direction of a member of the State Police or a law enforcement officer, the person tested shall be permitted to have samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.

d. A member of the State Police or a law enforcement officer shall inform the person tested of his rights under subsections b. and c. of this section.

e. No chemical test, as provided in this section, or specimen necessary for a test, may be made or taken forcibly and against physical resistance thereto by the defendant. A member of the State Police or a law enforcement officer shall, however, inform the person arrested of the consequences of refusing to submit to the test, in accordance with section 9 of P.L.1986, c.39 (C.12:7-57). A standard statement, prepared by the Chief Administrator of the New Jersey Motor Vehicle Commission shall be read by a member of the State Police or a law enforcement officer to the person under arrest.

3. Section 8 of P.L.1986, c.39 (C.12:7-56) is amended to read as follows:

C.12:7-56 Methods, techniques.

8. Chemical analyses of the arrested person's breath, to be considered valid under the provisions of section 7 of P.L.1986, c.39 (C.12:7-55) shall have been performed according to methods approved by the Attorney General and by a person certified for this purpose by the Attorney General. The Attorney General is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct the analyses, and to make certifications of the individuals. Certifications shall be subject to termination or revocation at the discretion of the Attorney General. The Attorney General shall prescribe a form for reports of the chemical analysis of breath to be used by law enforcement officers and others acting in accordance with the provisions of section 7 of P.L.1986, c.39 (C.12:7-55). The forms shall be sequentially numbered. Each chief of police, in the case of forms distributed to law enforcement officers and others in his municipality, or the other officer, board, or official

having charge or control of the law enforcement department, where there is no chief, and the Chief Administrator of the New Jersey Motor Vehicle Commission and the Superintendent of State Police, in the case of forms distributed to law enforcement officers and other personnel in their divisions, shall be responsible for the furnishing and proper disposition of the forms. Each responsible party shall prepare or have prepared records and reports relating to the forms and their disposition, in the manner and at such times as the Attorney General shall prescribe.

4. Section 9 of P.L.1986, c.39 (C.12:7-57) is amended to read as follows:

C.12:7-57 Refusal to submit to chemical test; revocation of privileges, fines.

9. a. A court shall revoke the privilege of a person to operate a power vessel or a vessel which is 12 feet or greater in length, if after being arrested for a violation of section 3 of P.L.1952, c.157 (C.12:7-46), the person refuses to submit to the chemical test provided for in section 7 of P.L.1986, c.39 (C.12:7-55) when requested to do so. The revocation shall be for one year unless the refusal was in connection with a second offense under section 3 of P.L.1952, c.157 (C.12:7-46), in which case the revocation period shall be for two years. If the refusal was in connection with a third or subsequent offense under section 3 of P.L.1952, c.157 (C.12:7-46), the revocation shall be for 10 years. The court also shall revoke the privilege of a person to operate a motor vehicle over the highways of this State for a period of: not less than seven months or more than one year for a first offense; two years for a second offense; and 10 years for a third or subsequent offense. The court shall also fine a person convicted under this section: not less than \$300 nor more than \$500 for a first offense; not less than \$500 or more than \$1,000 for a second offense; and \$1,000 for a third or subsequent offense.

b. The court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person had been operating or was in actual physical control of the vessel while under the influence of intoxicating liquor, or a narcotic, hallucinogenic or habit-producing drug, whether the person was placed under arrest, and whether the person refused to submit to the test upon request of the officer. If these elements of the violation are not established, no conviction shall issue.

c. In addition to any other requirements provided by law, a person whose privilege to operate a vessel is revoked for refusing to submit to a chemical test shall satisfy the screening, evaluation, referral and program requirements of the Bureau of Alcohol Countermeasures in the Division of Alcoholism in the Department of Health and Senior Services. A fee of \$40 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order to defray the costs of the screening, evaluation and referral by the Bureau of Alcohol Countermeasures and the cost of an education or rehabilitation program. Failure to satisfy this requirement shall result in the immediate revocation of the privilege to operate a vessel on the waters of this State or the continuation of revocation until the requirements are satisfied. The revocation for a first offense may be concurrent with or consecutive to a revocation imposed for a conviction under the provisions of section 3 of P.L.1952, c.157 (C.12:7-46) arising out of the same incident; the revocation for a second or subsequent offense shall be consecutive to a revocation imposed for a conviction under the provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

d. In addition to any other requirements provided by law, a person convicted under this section shall be required after conviction to complete a boat safety course from the list approved by the Superintendent of State Police pursuant to section 1 of P.L.1987, c.453 (C.12:7-60), which shall be completed prior to the restoration of the privilege to operate a vessel which may have been revoked or suspended for a violation of the provisions of this section. Failure to satisfy this requirement shall result in the immediate revocation of the privilege to operate a vessel on the waters of this State, or the continuation of revocation until the requirements of this subsection are satisfied.

5. This act shall take effect immediately.

Approved July 2, 2004.