



**STATE OF NEW JERSEY**

**LAW REVISION COMMISSION**

**Draft Tentative Report**

Relating to

**Traffic on Marked Lines**

**January 7, 2013**

This Draft Tentative Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Draft Tentative Report, please inform the Commission so that your approval can be considered along with other comments.

Please send comments concerning this Draft Tentative Report or direct any related inquiries, to:

Uchechukwu Enwereuzor, Legislative Law Clerk  
NEW JERSEY LAW REVISION COMMISSION  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07101  
973-648-4575  
(Fax) 973-648-3123  
Email: [njlrcc@njlrcc.org](mailto:njlrcc@njlrcc.org)  
Web site: <http://www.njlrcc.org>

# TRAFFIC ON MARKED LINES

## I. Introduction

This project resulted from the New Jersey Supreme Court decision in *State v. Regis*, 208 N.J. 439, 32 A.3d 1109 (2011), addressing the issue of whether the first and second clauses of *N.J.S.A. 39:4-88(b)* identify two separate, independent offenses or combine to describe a single offense. Although the words used in *N.J.S.A. 39:4-88(b)* appear plain, the manner in which the language is to be interpreted was not immediately apparent. The confusion in interpreting the language in *N.J.S.A. 39:4-88(b)* is noted by the New Jersey Supreme Court in *Regis*, which acknowledged that courts have adopted two alternative interpretations of *N.J.S.A. 39:4-88(b)*. After considering the issue, the Supreme Court held that the better construction of the statute is that it consists of two separate, independent clauses, each of which addresses a distinct offense. The Commission approved a project to revise *N.J.S.A. 39:4-88(b)* to incorporate the Court's determination.

In *Regis*, the defendant was charged with failure to maintain a lane, in violation of *N.J.S. 39:4-88(b)*, and later convicted of the offense in municipal court. *Id.* at 442. Defendant appealed his conviction to the Law Division, contending that a driver's conduct does not constitute an offense under *N.J.S. 39:4-88(b)* unless he failed to maintain a single lane of travel and shifted from one lane to another without first ascertaining the safety of the maneuver. *Id.* The Law Division rejected defendant's argument, construing *N.J.S. 39:4-88(b)* to identify two independent offenses, the first of which was committed by defendant because he failed to maintain a single lane of travel. *Id.* The Appellate Division reversed the determination of the Law Division with respect to *N.J.S. 39:4-88(b)*. *Id.* at 444. The Appellate Division held that the two clauses of the statute "clearly" describe only one offense: failing to maintain a lane of travel by changing lanes without first ascertaining that the lane change can be conducted safely. *Id.* The New Jersey Supreme Court considered the case on appeal and explained that the first clause imposes a continuous requirement upon the driver: to maintain his or her vehicle in a single lane, by not swerving in and out of neighboring lanes. *Id.* The statute's second clause addresses a related, but discrete mandate of the Code, requiring a driver to ascertain the safety of switching lanes before conducting a lane change. *Id.*

The statute at issue, in subsection b., presently reads as follows:

A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety.

According to the Supreme Court, the consequence of this single sentence is that an individual is guilty of violating this provision if he or she fails to stay within a designated lane. *Regis*, 208 N.J. at 448. Likewise, this sentence also makes it a violation for a driver to switch lanes before determining that it is safe to do so. *Id.*

The Supreme Court in *Regis* determined that the meaning of *N.J.S. 39:4-88(b)* is reflected in the Legislature's use of the legal predicate, "which is the component of statutory language that

directs that the legal subject act in the manner prescribed by the legislature and is the verb that directs or permits action or inaction.” *Id.* at 447. *N.J.S.* 39:4-88(b) contains two separate legal predicates directing the conduct of drivers: “shall be driven” in the first clause and “shall not be moved” in the second. *Id.* As a result, the Court interpreted the Legislature’s use of the word “shall” in each clause as an indicator of the Legislature’s intent to impose two separate requirements upon the drivers of motor vehicles. *Id.* at 448.

Title 39, including the provisions contained in Chapter 4, applies to the owners and drivers of vehicles in a variety of circumstances. *N.J.S.* 39:4-1. The particular statute in question pertains to all drivers on a roadway that has been divided into clearly marked lanes for traffic. *N.J.S.* 39:4-88. Since there was a difference of opinion among the courts that considered this issue, it is of concern to Staff that drivers responsible for following the law may not properly interpret the two independent laws created by the one sentence in *N.J.S.* 39:4-88(b). It is vital that the language used to regulate travel is clearly constructed and can easily be interpreted by laypersons. As a result, in light of the Supreme Court’s decision in *Regis* Staff has prepared draft modifications to the language of *N.J.S.* 39:4-88(b).

## II. Draft

### 39:4-88. Traffic on marked lanes

When a roadway has been divided into clearly marked lanes for traffic, drivers of vehicles shall obey the following regulations:

a. A vehicle shall normally be driven in the lane nearest the right-hand edge or curb of the roadway when that lane is available for travel, except when overtaking another vehicle or in preparation for a left turn.

b. A vehicle shall be driven as nearly as practicable entirely within a single lane, ~~and~~

c. A vehicle shall not be moved from a lane until the driver has first ascertained that the movement can be made with safety.

~~e. d.~~ Upon a highway which is divided into 3 lanes, a vehicle shall not be driven in the center lane except when overtaking or passing another vehicle or in preparation for a left turn or unless the center lane is at the time allocated for traffic moving in the direction the vehicle is proceeding and is signposted to give notice of that allocation.

~~d. e.~~ The State Highway Commissioner may by regulation or local authorities may by resolution or ordinance with respect to highways under their jurisdiction designate right-hand lanes for slow moving traffic and inside lanes for traffic moving at the speed designated for the district as provided under this chapter, and when the lanes are signposted or marked to give notice of the designation a vehicle may be driven in any lane allocated to traffic moving in the direction in

which it is proceeding, but when traveling within the inside lanes the vehicle shall be driven at approximately the speed authorized in such lanes and speed shall not be decreased unnecessarily so as to block, hinder or retard traffic.

e. f. When such roadway has been divided in such a manner that there are 3 or more lanes for traffic in any one direction, no truck of 10,000 pounds registered gross weight or over shall be driven in the farthest left-hand lane, except when and to the extent necessary to prepare for a left turn, or when necessary to enter or leave such roadway by entrance or exit to or from the left lane or when reasonably necessary in response to emergency conditions.

#### **COMMENT**

The revision to *N.J.S. 39:4-88* separates the two component parts and clarifies that subsection b. represents two separate independent clauses, each of which addresses a different offense. Subsection b. denotes the requirement that a driver must maintain his or her vehicle in a single lane, unless it is not feasible to do so. Subsection c. represents the second clause of that mandate that a driver must ascertain the safety of switching lanes before conducting a lane change. With the separation of the two clauses, the language that was originally subsections c., d., and e. has been adjusted accordingly. The revision incorporates the determination of the New Jersey Supreme Court in *State v. Regis*, 208 *N.J.* 439, 447 (2011).