

ANTIGUA AND BARBUDA



THE VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2018

No. of 2018

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ARRANGEMENT

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AN ACT to amend the Vehicles and Road Traffic Act Cap 460.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Vehicles and Road Traffic (Amendment) Act, 2018.

2. Interpretation

In this Act—

“principal Act” means the Vehicles and Road Traffic Act, Cap 460.

3. Amendment of section 2 -Interpretation

The principal Act is amended in section 2 by inserting the following definition —

“Minister” means the Minister with responsibility for vehicular control.

4. Amendment of section 54-Driving when under influence of liquor or drugs

The principal Act is amended in section 54 by repealing it in its entirety and substituting the following—

“54-Driving under influence of alcohol or drugs

(1) A person who when driving or attempting to drive, or when in charge of, a motor vehicle on a road is under the influence of alcohol or drug to such an extent as to be incapable of having proper control of the vehicle, or is stopped by a police officer and is found over the prescribed limit by a mandatory test is liable on summary conviction—

- (a) for a first offence to a penalty not exceeding ten thousand dollars or to imprisonment for up to three years, and
 - (b) on conviction for a second and every subsequent offence to a penalty not exceeding fifteen thousand dollars or to imprisonment for up to five years.”.
- (2) A person convicted of—
- (a) two consecutive offences under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of three years from the date of the conviction from holding or obtaining a driving permit; and
 - (b) a third conviction for a like offence, shall be permanently disqualified from holding or obtaining a driving permit;
- (3) The Minister may, by Order published in the Gazette, approve the device to be used for the detection of drugs pursuant to subsection (1).
- (4) A person shall not drive or attempt to drive, or be in charge of a motor vehicle on a road or other public place if he has consumed alcohol in such a quantity that the proportion thereof in his breath or blood exceeds the prescribed limit.
- (5) A person convicted of—
- (a) two consecutive offences under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of three years from the date of the conviction from holding or obtaining a driving permit; and
 - (b) a third conviction for a like offence, shall be permanently disqualified from holding or obtaining a driving permit.
- (6) A person shall not be convicted under this section of being in charge of a motor vehicle under subsection (1) if he proves that at the material time, the circumstances were such that there was no likelihood of his driving the motor vehicle while there was alcohol in his breath or blood in a proportion exceeding the prescribed limit.
- (7) A police officer may arrest without a warrant, any person committing an offence under this section.

54A. Breath Test

- (1) Where a police officer has reasonable cause to suspect—
- (a) that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his breath or blood exceeding the prescribed limit or is in breach of section 54;
 - (b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his breath or blood exceeding the prescribed limit and that the person still has alcohol in his breath or blood; or

(c) that a person has been driving, attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed an offence against this Act whilst the vehicle was in motion,

he may, subject to subsection (4), require him to provide a specimen of breath for a breath test at or near the place where the requirement is made.

(2) No requirement may be made by virtue of paragraph (b) or (c) of subsection (1) unless it is made as soon as reasonably practicable after the commission of the offence.

(3) Where an accident occurs involving a motor vehicle on a road, a police officer may, subject to subsection (4), on arriving at the place of the accident, require the driver of the vehicle, whom the police officer has reasonable cause to believe was driving or attempting to drive the vehicle after consuming alcohol in a quantity that the proportion of the alcohol in his breath or blood exceeds the prescribed limit at the time of the accident, to provide a specimen of breath for a breath test—

(a) either at or near the place where the accident occurred; or

(b) at a police station within reasonable proximity to the place where the accident occurred.

(4) Where a person referred to in subsection (3) is at a hospital as a patient, he may be required by a police officer to give a specimen of breath at the hospital but no such requirement may be made unless the medical practitioner in charge of his case—

(a) is given prior notice of the proposal to make the requirement; and

(b) does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(5) Where a person, without reasonable excuse, fails to provide a specimen of breath under subsection (1), (3), (4) or (8) he commits an offence and shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for up to three years.

(6) A police officer may arrest without warrant any person who, as a consequence of a breath test, is found to have a proportion of alcohol in his breath exceeding the prescribed limit but no such arrest may be made while the person is at a hospital as a patient.

(7) Where a person required by a police officer under subsection (1), (3), (4) or (8) to provide a specimen of breath for a breath test fails to do so and the police officer has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit, the police officer may, without prejudice to sections 54(3) and 54A(5), arrest the person without a warrant but no such arrest may be made if the person is at a hospital as a patient.

(8) A person arrested under subsection (7), section 54(3) or 54A(5) shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test at the police station.

(9) The Minister may, upon recommendation by the Chief Medical Officer, approve the device to be used for the purpose of obtaining an indication of alcohol in a person's breath, by Order published in the Gazette.

54B. Breath analysis

(1) Subject to subsections (2) and (3) where—

- (a) any person required by a police officer under section 54A to undergo a breath test fails to undergo that test; or
- (b) in consequence of a breath test carried out under section 54A, it is indicated that there may be present in that person's breath, a concentration of alcohol in excess of the prescribed limit, the police officer may require that person to submit, in accordance with the directions of the police officer, to a breath analysis and on any such requirement, warn him that a failure to so submit may render him liable to prosecution.

(2) The breath analysis required under subsection (1) shall be carried out by a police officer authorised in that behalf by the Minister to whom responsibility for national security has been assigned—

- (a) at or near the place where the requirement is made if facilities for the specimens to be taken are available and it is practicable to conduct the analysis there; or
- (b) at a police station, as the police officer may direct.

(3) For the purpose of the breath analysis—

- (a) a person must provide two separate specimens of breath for analysis;
- (b) such specimens must be provided in accordance with the directions of the police officer referred to in subsection (2);
- (c) there must be an interval of not less than two minutes and not more than ten minutes between the provision of specimens; and
- (d) the reading from the specimen that indicates the lower concentration of alcohol in the person's breath shall be taken to be the result of the breath analysis.

(4) A police officer shall not require any person to undergo a breath test or to submit to a breath analysis—

- (a) if the person has been admitted to hospital for medical treatment and the medical practitioner in immediate charge of his treatment has not been notified of the intention to make the requisition, or objects on the ground that compliance therewith would be prejudicial to the proper care or treatment of that person;
- (b) if it appears to the police officer that it would, by reason of injuries sustained by the person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis; or
- (c) at that person's usual place of abode.

(5) Notwithstanding subsection (4)(c), a person may be required to submit to a breath test at that person's usual place of abode—

- (a) if the police officer has reasonable cause to believe that—
 - (i) the person was involved in an accident on a road or other public place within the preceding two hours resulting in death or serious injury; and
 - (ii) at the time when the accident occurred, the person had an alcohol level in his breath exceeding the prescribed limit; and
- (b) if it was not feasible for a police officer to require the person to submit to a breath test at the scene of the accident.

(6) Any person who—

- (a) upon being required under subsection (1) to submit to a breath analysis fails to do so in accordance with the directions of a member of the Royal Police of Antigua and Barbuda; or
- (b) wilfully does anything to alter the concentration of alcohol in his breath or blood between the time of the event referred to in section 54A in respect of which he has been required to undergo a breath test) and the time when he undergoes that test or, if he is required to submit to a breath analysis, the time when he submits to that analysis, commits an offence and is liable—
- (c) in the case of a first conviction, to a fine not exceeding ten thousand dollars or to imprisonment for up to three years; and
- (d) in the case of a second or subsequent conviction, to a fine not exceeding fifteen thousand, dollars or to imprisonment for up to five years.

(7) It shall be a defence to a prosecution for an offence under subsection (5)(a) if the accused satisfies the Court that he was unable on medical grounds at the time he was required to do so, to undergo a breath test or to submit to a breath analysis, as the case may be.

(8) Within one hour after a person has submitted to a breath analysis, the police officer operating the breath analyzing instrument shall deliver to that person, a statement in writing signed by that police officer specifying—

- (a) the concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in one hundred millilitres of breath; and
- (b) the time of day and the day on which the breath analysis was completed.

(9) In proceedings for an offence under section 54A, 54B or 54D—

- (a) evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analysing instrument operated by the police officer authorised in that behalf under subsection (2); and
- (b) the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event

mentioned in section 70B(1)(a) unless the accused proves that the concentration of alcohol in his breath at the time did not exceed the prescribed limit.

(10) In proceedings for an offence under this section, a certificate purporting to be signed by a police officer certifying that—

- (a) he is authorised by the Minister to whom responsibility for national security has been assigned to operate breath analysing instruments;
- (b) a person named therein submitted to a breath analysis;
- (c) the apparatus used by him to make the breath analysis was a breath analysing instrument approved by the Minister;
- (d) the analysis was made on the date and completed at the time stated in the certificate;
- (e) a concentration of alcohol determined by the breath analysing instrument and expressed in microgrammes of alcohol in one hundred millilitres of breath was present in the breath of that person on the date and at the time stated in the certificate; and
- (f) a statement in writing required by subsection (8) was delivered in accordance with that subsection, shall be *prima facie* evidence of the particulars certified in and by the certificate.

(11) In proceedings for an offence under this section, a certificate purporting to be signed by the Minister responsible for national security that the police officer named therein is authorized to operate breath analysing instruments, shall be *prima facie* evidence of the particulars certified in and by the certificate.

(12) In any proceedings for an offence under this section, evidence of the condition of a breath analyzing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

(13) The Minister may, by Order, approve the device to be used for the quantitative measuring of the proportion of alcohol in a person's breath.

54C. Laboratory test

(1) Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under section 54, a police officer may require a person under investigation to provide a specimen of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a specimen of breath for a breath test.

(2) A person shall not be required to provide a specimen of blood for a laboratory test under subsection (1) if he is at a hospital as a patient and the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care or treatment of that person.

(3) A police officer shall not require a person to submit a specimen of blood for a blood analysis once a breath analysis has been carried out in respect of that person and the result is available.

(4) Nothing in subsections (1) to (3) shall affect the provisions of section 54E.

(5) For the purposes of this section and sections 54, 54D and 54E, where any person is required to provide a specimen of blood, such specimen shall be taken only—

- (a) with the consent of that person;
- (b) at a hospital; and Laboratory test.
- (c) by a medical practitioner or qualified laboratory technician.

(6) The Minister to whom responsibility for health is assigned, shall by Order designate laboratories for the purpose of giving effect to this section.

54D. Refusal to consent to taking of or providing specimen.

(1) Any person who is under investigation in relation to an offence under section 54 and who refuses to provide a sample of blood for a blood test when required to do so under section 54C(1), commits an offence and shall be liable—

- (a) in the case of a first conviction, to a fine not exceeding ten thousand dollars or to imprisonment for up to three years; and
- (b) in the case of a second or subsequent conviction, to a fine not exceeding fifteen thousand, dollars or to imprisonment for up to five years.

(2) A person shall not be treated as failing to provide a specimen of blood if he is unable to do so for the reasons set out in section 54C(2).

54E. Evidence for proceedings for an offence under sections 54 or 54A

(1) For the purposes of any proceedings for an offence under section 54, a certificate signed by an authorised analyst, certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the analyst.

(2) For the purposes of any proceedings for an offence under section 54, a certificate purporting to be signed by the medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the medical practitioner.

(3) Subsections (1) and (2) shall not apply to a certificate tendered on behalf of the prosecution—

- (a) unless a copy has been served personally on the accused or on his attorney-at-law or by prepaid registered post not less than seven days before the hearing or trial; or
- (b) if the accused, not less than seven days before the hearing or trial, or within such further time as the Court may in the circumstances of the case allow, has served

notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed.

(4) Where, in proceedings for an offence under section 54 the accused, at the time a specimen of blood was taken from or provided by him in accordance with this Act, asked to be supplied with such a specimen, evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless—

- (a) the specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided; and
- (b) the other specimen or part was supplied to the accused.

(5) The Minister to whom responsibility for health is assigned may designate qualified persons to conduct laboratory tests in accordance with this Act, to determine the concentration of alcohol in a person's blood.

54F. Interpretation of sections 54 to 54E.

(1) In sections 54 to 54E, except so far as the context otherwise requires—

“authorised analyst” means a person designated as such by the Minister to whom responsibility for health is assigned, under section 54E(5);

“breath analysis” means the quantitative measuring of the proportion of alcohol in a person's breath, carried out by means of a device prescribed for the purpose by the Minister, under section 54B(13);

“breath test” means a test for the purpose of obtaining an indication of the proportion of alcohol in the person's breath carried out by means of a device approved for the purpose of such a test by the Minister, under section 54A(9);

“drug” includes any intoxicant other than alcohol;

“fail”, in relation to providing a specimen, includes refuse;

“hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients and includes a laboratory accredited under the Standards Act and recognised by the Minister to whom responsibility for health is assigned, as a place where laboratory tests are carried out;

“laboratory test” means the analysis of a specimen provided for the purpose;

“police officer” means a member of the Royal Police Force of Antigua and Barbuda;

“the prescribed limit” means in respect of—

- (a) breath alcohol concentration, thirty-five microgrammes of alcohol in one hundred millilitres of breath or such other proportion as may be prescribed; and
- (b) blood alcohol concentration, eighty milligrammes of alcohol in one hundred millilitres of blood, or such other proportion as may be prescribed.

(2) References in section 54A to providing a specimen of breath shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out.”.

5. Amendment of section 56-Careless driving

The principal Act is amended in section 56 by repealing subsection (1) and substituting the following—

“(1) If any person drives a motor vehicle on a road while holding or using a hand-held mobile device, or without due care and attention, or without reasonable consideration for other persons using the road, he commits an offence and shall be liable on summary conviction for a first offence to a fine of one thousand dollars and to disqualification from holding or obtaining a driver's licence for three months, and for a second and every subsequent offence to a penalty of twenty-five hundred dollars and to disqualification from holding or obtaining a driver's licence for one year.”.

6. Amendment of section 58-Racing speed trials

(1) The principal Act is amended in section 58 by inserting the following after subsection (2)

“(3) Notwithstanding anything contained in section 58, the Traffic Commissioner may, authorise the holding on a public road of trials of speed of any class or description, subject to such conditions as he may consider necessary.

(4) Without limiting or affecting the operation of subsection (1), the Traffic Commissioner may, give such directions with respect to the movement of, or the route to be followed by, vehicular traffic, during such period, as may be necessary or expedient to prevent or mitigate congestion or obstruction of traffic, or danger to or from traffic in consequence of the holding of a trial of speed authorised under subsection (3) including direction that any road or part of a road specified in the direction shall be closed during that period to vehicles or to vehicles of a class or description so specified.

(5) All such directions given under subsection (2) shall be published in the Gazette

(6) The promoter of a trial of speed on any public road shall, not less than 28 days before the day on which the trial is to be held, or, if it is to be held on more than one day, the day on which the trial is to begin, apply to the Traffic Commissioner in writing for permission to hold the trial and any such application must contain the following particulars—

- (a) on which and the times during which the trial is to
- (b) the description and the route to be followed by the competitors and the name of, or a description sufficient to identify any public road on which the trial or any part thereof is to take place;
- (c) particulars of any place where the trial is to start or where it is to finish;
- (d) the maximum number of motor vehicles that will be permitted to take part in the trial;

- (e) sufficient particulars to show what arrangements will be made for marshalling, assisting or supervising the competitors; and
- (f) such particulars of the rules or arrangements governing the trial as may be sufficient to show that the proposed trial is a speed trial.

(2) In this section, “promoter” means the person who organises or arranges or is responsible for the organisation or arrangement of a speed trial.”.

7. Amendment of section 87 -Regulations

The principal Act is amended in section 87 by repealing the word “Cabinet” and substituting the word “Minister”.

Passed by the House of Representatives on the _____, 2018.

Passed by the Senate on the _____, 2018.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMEORANDUM

The purpose of this Bill is to amend the Vehicle and Road Traffic Act Cap 460, facilitate the Police to use equipment to test alcohol levels of motorists, and to bring the Act up to date with respect to the offence of using a hand held mobile device while driving a vehicle.

Clause 1 states the short title of the Act.

Clause 2 defines any mention of the principal Act as being a reference to the Vehicles and Road Traffic Act, Cap 460

Clause 3 inserts a definition of Minister into the Interpretation section of the principal Act.

Clause 4 repeals section 54 in its entirety and adds the following new sections—

54-Driving under influence of alcohol or drugs

54A. Breath Test

54B. Breath analysis

54C. Laboratory test

54D. Refusal to consent to taking of or providing specimen.

54E. Evidence for proceedings for an offence under sections 54 or 54A

54F. Interpretation of sections 54 to 54E.

Clause 5 makes it now an offence to drive a motor vehicle on a road while holding or using a hand-held mobile device. Regulations shall be made by the Minister which outline the particulars governing this offence.

Clause 6 authorises the Traffic Commissioner to permit the holding on a public road of trials of speed, and in addition give directions as to the route to be followed by vehicular traffic in order to avoid any danger or obstruction to traffic as a result of holding such trial.

Clause 7 removes the power to make Regulations from the Cabinet, and places it in the power of the Minister with responsibility for vehicular control.

Hon. Robin K.M. Yearwood
Minister with responsibility
for vehicular control.