

MOTOR TRAFFIC (AMENDMENT) ACT.

New South Wales



ANNO SEPTIMO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 64, 1968.

An Act to provide for the testing of certain motor vehicle drivers to determine the concentration of alcohol in their blood; for this purpose to amend the Motor Traffic Act, 1909, as subsequently amended; and for purposes connected therewith. [Assented to, 16th December, 1968.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Motor Traffic (Amendment) Act, 1968".

Short title
and
citation.

(2)

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No. 64, 1968 — (2) The Motor Traffic Act, 1909, as subsequently amended and as amended by this Act, may be cited as the Motor Traffic Act, 1909–1968.

Amendment of Act No. 5, 1909. 2. The Motor Traffic Act, 1909, as subsequently amended, is amended—

Sec. 2. (Definitions.) (a) (i) by inserting in subsection one of section two next before the definition of “Court” the following new definitions :—

“Breath analysing instrument” means any instrument of a type approved by the Governor by notification published in the Gazette as being designed to ascertain, by analysis of a person’s breath, the concentration of alcohol present in that person’s blood.

“Breath analysis” means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person’s breath, the concentration of alcohol present in that person’s blood.

“Breath test” means a test for the purpose of indicating the concentration of alcohol present in a person’s blood, carried out on that person’s breath by means of a device, not being a breath analysing instrument, of a type approved by the Governor by notification published in the Gazette.

(ii) by inserting in the same subsection next after the definition of “Prescribed” the following new definition :—

“Prescribed concentration of alcohol” means a concentration of 0.08 grammes or more of alcohol in 100 millilitres of blood.

(b)

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(b) by inserting next after section 4D the following new section :—

New sec.
4E.

4E. (1) Any person who whilst there is present in his blood the prescribed concentration of alcohol—

Prescribed concentration of alcohol in driver's blood.

- (a) drives a motor vehicle; or
- (b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,

shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding four hundred dollars or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

(2) Where a member of the police force has reasonable cause to believe that—

- (a) whilst driving a motor vehicle any person has by act or omission contravened or failed to comply with any provision of this Act or the regulations;
- (b) by the manner in which any person drives a motor vehicle, or occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion, that person has alcohol in his body; or
- (c) any person was, at the time of the occurrence of an accident upon a public street in which a motor vehicle was involved, the driver of the motor vehicle,

that member may require that person to undergo a breath test in accordance with the directions of that member.

(3)

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(3) Where—

- (a) it appears to a member of the police force in consequence of a breath test carried out by him on a person under subsection two of this section that the device by means of which the test was carried out indicates that there may be present in that person's blood the prescribed concentration of alcohol; or
- (b) a person required by a member of the police force under subsection two of this section to undergo a breath test refuses or fails to undergo that test in accordance with the directions of that member,

that member may thereupon arrest that person without warrant and take that person or cause that person to be taken with such force as may be necessary to a police station or some other place as that member considers desirable and there detain him or cause him to be detained for the purposes of the provisions hereinafter in this section provided.

(4) A member of the police force may require a person who has been arrested under subsection three of this section to submit, in accordance with the directions of that member, to a breath analysis.

A breath analysis shall be carried out by a member of the police force authorised in that behalf by the Commissioner of Police at or near a police station or such other place as that member considers desirable.

(5) A member of the police force shall not require a person to undergo a breath test or to submit to a breath analysis—

- (a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of

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of his treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance therewith would be prejudicial to the proper care or treatment of that person;

- (b) if it appears to that member that it would by reason of injuries sustained by that person be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis;
- (c) at any time after the expiration of two hours from the occurrence of the event by reason of which that member was entitled under subsection two of this section to require that person to undergo a breath test; or
- (d) at that person's usual place of abode.

(6) Any person who when required by a member of the police force to undergo a breath test under subsection two of this section refuses or fails to undergo the breath test in accordance with the directions of that member shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding two hundred dollars.

(7) Any person who—

- (a) upon being required under subsection four of this section by a member of the police force to submit to a breath analysis refuses or fails to submit to that analysis in accordance with the directions of that member; or
- (b) between the time of the event referred to in paragraph (a), (b) or (c) of subsection two of this section in respect of which

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he has been required by a member of the police force to undergo a breath test and the time when he undergoes that test or, if he is required by a member of the police force to submit to a breath analysis, the time when he submits to that analysis, wilfully does anything to alter the concentration of alcohol in his blood,

shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding four hundred dollars or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

(8) It shall be a defence to a prosecution for an offence under subsection six or paragraph (a) of subsection seven of this section if the defendant 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.

(9) (a) A person who is required pursuant to subsection four of this section to submit to a breath analysis may request the member of the police force making the requisition to arrange for the taking, in the presence of a member of the police force, of a sample of that person's blood for analysis at that person's own expense, by a legally qualified medical practitioner nominated by him or by a legally qualified medical practitioner nominated by that member at his request, but the making of such a request or the taking of a sample of that person's blood shall not absolve that person from the obligation imposed on him to submit to a breath analysis in accordance with subsection four of this section.

(b) A medical practitioner by whom a sample of a person's blood is taken pursuant to an arrangement referred to in paragraph (a) of this subsection

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subsection shall divide the sample into two approximately equal parts of which one shall be handed to the person from whom it was taken or to some other person for the use and benefit of that person and one, enclosed in a suitable sealed container, shall be handed to the member of the police force present at the time the sample was taken. No. 64, 1968

(10) As soon as practicable after a person has submitted to a breath analysis the member of the police force operating the breath analysing instrument shall deliver to that person a statement in writing signed by that member specifying—

- (a) the concentration of alcohol determined by the analysis to be present in that person's blood and expressed in grammes of alcohol in 100 millilitres of blood; and
- (b) the day on and time of the day at which the breath analysis was completed.

(11) In proceedings for an offence under subsection one of this section evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by a member of the police force authorised in that behalf by the Commissioner of Police, and the concentration of alcohol determined as aforesaid shall be deemed to be the concentration of alcohol in the blood of that person at the time of the occurrence of the event referred to in paragraph (a), (b) or (c) of subsection two of this section, as the case may be, where the breath analysis was made within two hours after that event, unless the defendant proves that the concentration of alcohol in his blood at that time was less than 0.08 grammes of alcohol in 100 millilitres of his blood.

(12)

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(12) (a) In proceedings for an offence under subsection one of this section a certificate purporting to be signed by a member of the police force certifying that—

- (i) he is authorised by the Commissioner of Police to operate breath analysing instruments;
- (ii) a person named therein submitted to a breath analysis;
- (iii) the apparatus used by him to make the breath analysis was a breath analysing instrument within the meaning of this Act;
- (iv) the analysis was made on the day and completed at the time stated in the certificate;
- (v) a concentration of alcohol determined by that breath analysing instrument and expressed in grammes of alcohol in 100 millilitres of blood was present in the blood of that person on the day and at the time stated in the certificate; and
- (vi) a statement in writing required by subsection ten of this section was delivered in accordance with that subsection,

shall be prima facie evidence of the particulars certified in and by the certificate.

(b) In proceedings for an offence under this section a certificate purporting to be signed by the Commissioner of Police that the member of the police force named therein is authorised by the Commissioner of Police to operate breath analysing instruments shall be prima facie evidence of the particulars certified in and by the certificate.

(c) In any proceedings for an offence under this section, evidence of the condition of a breath analysing instrument or the manner in which

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it was operated shall not be required unless evidence No. 64, 1968 that the instrument was not in proper condition or was not properly operated has been adduced.

(13) (a) The fact that a person has undergone a breath test or submitted to a breath analysis, the result of a breath test or breath analysis or the fact that a person has been convicted of an offence under subsection one, six or seven of this section shall not, for the purposes of any contract of insurance, be admissible as evidence of the fact that that person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle, but nothing in this subsection precludes the admission of any other evidence to show any such fact.

(b) The provisions of this subsection have effect notwithstanding anything contained in any contract of insurance and any covenant, term, condition or provision therein is to the extent that the operation of this subsection is excluded, limited, modified or restricted, void.

(c) Any covenant, term, condition or provision contained in any contract of insurance, to the extent that it purports to exclude or limit the liability of the insurer in the event of the owner or driver of a motor vehicle being convicted of an offence under this section, is void, but nothing in this subsection precludes the inclusion in a contract of insurance of any other covenant, term, condition or provision whereby the liability of the insurer is excluded or limited.

(14) A person convicted of an offence—

- (a) under subsection seven of this section;
or
- (b) under subsection two of section five of this Act.

shall

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shall not be liable—

- (c) where he has been convicted of an offence referred to in paragraph (a) of this subsection, to be convicted of an offence referred to in paragraph (b) of this subsection; or
- (d) where he has been convicted of an offence referred to in paragraph (b) of this subsection, to be convicted of an offence referred to in paragraph (a) of this subsection,

if the offence referred to in paragraph (a), and the offence referred to in paragraph (b), of this subsection arose directly or indirectly out of the same circumstances.

(15) Where by reason of the occurrence of an event referred to in paragraph (a), (b) or (c) of subsection two of this section a person is required by a member of the police force to undergo a breath test and as a consequence thereof to submit to a breath analysis and he submits to the breath analysis in accordance with the directions of that member, he shall not be charged with an offence under subsection two of section five of this Act, being the offence of driving a motor vehicle, at the time of that event, whilst he was under the influence of intoxicating liquor or the offence of occupying the driving seat of a motor vehicle and attempting to put such motor vehicle in motion, at the time of that event, whilst he was under the influence of intoxicating liquor.

Sec. 5A.
(Detention
of vehicle
in certain
cases.)

- (c) by inserting in section 5A after the word "against" the words "section 4E or";

(d)

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- (d) (i) by inserting in paragraph (a) of subsection (3A) of section ten after the words "dangerous to the public," the words "or of an offence under subsection one or subsection seven of section 4E of this Act,";
- (ii) by inserting in subsection five of the same section after the words "dangerous to the public," the words "or with an offence under subsection one or subsection seven of section 4E of this Act,".

Sec. 10.
 (Court may impose penalty and suspend license upon conviction, etc.)

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