

THE ADMINISTRATION OF JUSTICE (MISCELLANEOUS
PROVISIONS) BILL, 2004

Arrangement of Clauses

Clause

1. Short title

PART I

EVIDENCE IN CRIMINAL PROCEEDINGS

2. Interpretation
3. New sections 15A, 15B and 15C inserted
4. New Schedule inserted
5. Section 19 amended

PART II

EXTENSION OF TIME TO PROSECUTE
CERTAIN SUMMARY OFFENCES

6. Interpretation
7. New section 30A inserted
8. Section 35 amended

PART III

BAIL

9. Interpretation
10. Section 6 amended
11. Section 6A inserted
12. Section 11A inserted

PART IV

DISHONoured CHEQUES

13. Interpretation
14. Section 2 amended
15. Section 3 amended
16. Section 4 amended
17. Section 8 inserted

PART V
FORGERY

18. Section 5A inserted

PART VI
ELECTRONIC TRANSFERS

19. Interpretation
20. Section 2 amended
21. Section 4 amended
22. Section 4A inserted
23. Section 11 amended
24. Section 12 amended
25. Section 15 amended
26. Section 21 amended

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 43,
No. 164, 21st September, 2004*

No. 23 of 2004

Third Session Eighth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVE

BILL

AN ACT to amend the Evidence Act, Chap. 7:02; the
Larceny Act, Chap. 11:12; the Bail Act, 1994; the
Negotiable Instruments (Dishonoured Cheques)
Act, 1998; the Forgery Act, Chap. 11:13; and the
Electronic Transfer of Funds Crime Act, 2000.

THE ADMINISTRATION OF JUSTICE (MISCELLANEOUS
PROVISIONS) BILL, 2004

Explanatory Note

(These notes form no part of the Bill but are intended
only to indicate its general purport)

The main purpose of this Bill is to amend certain pieces of criminal legislation. The Bill will amend the Evidence Act, Chap. 7:02, to provide for the use of a sample in evidence from evidence in bulk, for example, large quantities of dangerous drugs, to allow administrative and not scientific staff at the Trinidad and Tobago Forensic Science Centre to receive any substance or thing for examination or analysis, and to extend the list of "Government expert" to include a Fingerprint Technician from the Criminal Records Office of the Police Service. The Bill will also amend the Larceny Act, Chap. 11:12, to extend the limitation period of certain summary offences under that Act, that is, the time limit during which a complaint may be laid, and to change the offence of receiving under section 35 from an indictable to a summary offence.

The Bill will also amend the Bail Act, 1994 (Act No. 18 of 1994) to provide that if the High Court refuses or grants bail to a person convicted of a summary offence punishable with imprisonment, that person or the police may appeal that decision to the Court of Appeal, and to provide a right of appeal to an accused person or the police to the Court of Appeal where the High Court refuses or grants bail or varies the conditions of bail.

The Bill will also amend the Negotiable Instruments (Dishonoured Cheques) Act, 1998 (Act No. 9 of 1998), the Forgery Act, Chap. 11:13, and the Electronic Transfer of Funds Crime Act, 2000 (Act No. 87 of 2000). The Bill is divided into six Parts, and requires a simple majority vote.

Clause 1 provides for the short title of the Bill.

Part I will amend the Evidence Act, Chap. 7:02.

Clause 2 contains the interpretation provision.

Clause 3 would provide for the use of sample evidence instead of bulk evidence.

Clause 4 would insert a new Schedule to the Act to provide for a certificate to be issued, and signed by the police and a Justice of the Peace, where the police take the sample from the bulk.

Clause 5 would allow a sample of any thing or matter submitted to the Trinidad and Tobago Forensic Science Centre for examination, analysis or report to be accepted by an authorized person, and not by a Government expert; and to extend the category of "Government expert" to include a Fingerprint Technician from the Criminal Records Office.

Part II will amend the Larceny Act, Chap. 11:12.

Clause 6 would contain the interpretation provision.

Clause 7 seeks to amend the Act by inserting after section 30, a section 30A to extend the limitation period during which a complaint may be laid in relation to the offences stated under sections 28, 29, 30 (which are now summary offences) and 35 from six to twelve months.

Clause 8 seeks to amend section 35 to change the offence of receiving from an indictable to a summary offence.

Part III would amend the Bail Act, 1994 (Act No. 18 of 1994).

Clause 9 would provide the interpretation provision.

Clause 10 seeks to amend section 6 of the Act by removing the application of this section to a convicted person and conferring a discretion on the Court to consider certain matters when deciding whether or not to grant an accused person bail.

Clause 11 would provide a new section 6A to grant a right of appeal to a convicted person who has filed an appeal or the police against a decision by a Court to grant or refuse a grant bail.

Clause 12 would provide a new section 11A to grant a right of appeal to an accused person who is denied bail by the High Court or to the police where bail is granted and the decision of the Court of Appeal shall be final.

Part IV would amend the Negotiable Instruments (Dishonoured Cheques) Act, 1998 (Act No. 9 of 1998).

Clause 13 would provide the interpretation provision.

Clause 14 seeks to amend section 2 of the Act to provide that where a cheque is issued to replace a dishonoured cheque that was lost, destroyed, or cannot be found, the replacement cheque, if it is also dishonoured, is deemed to be the dishonoured cheque for the purpose of the Act.

Clause 15 seeks to amend section 3 of the Act by providing that the consent of the payee under subsection (2)(c) shall be in writing, and a new subsection is added to provide the date when an offence is committed under the Act.

Clause 16 seeks to amend section 4 of the Act by providing that the drawee is mandated to issue the notice or protest under subsection (2), that it must be a certified copy, and a copy of the dishonoured cheque and the notice or protest must be kept for one year. This clause also seeks to allow the payee to write the drawer informing him of the dishonour and this written notice will be used as evidence that the drawer knows that the cheque was dishonoured; and also to provide that a written notice is not required where the drawer makes a written confession that he committed an offence under the Act.

Clause 17 seeks to amend the Act by proposing a new section 8 to provide that the limitation period to prosecute a summary offence under the Act would be one year instead of six months.

Part V would amend the Forgery Act, Chap. 11:13.

Clause 18 seeks to insert a new section 5A to the Act to provide that it is a summary offence, punishable with imprisonment for five years, for a person to make, purchase, use, or have in his possession a forged driving permit, provisional permit, or learner's permit issued under the Motor Vehicles and Road Traffic Act, Chap. 48:50, or a national identification card issued under the Representation of the People Act, Chap. 2:01.

Part VI would amend the Electronic Transfer of Funds Crime Act, 2000 (Act No. 87 of 2000).

Clause 19 would provide the interpretation provision.

Clause 20 seeks to amend section 2 of the Act to apply to a person who is a cardholder but his name does not appear on the face of the card.

Clause 21 seeks to amend section 4 of the Act to apply to persons who are authorized in writing by the cardholder to use the card.

Clause 22 seeks to insert a section 4A to the Act to address the cases where a person lawfully obtains possession of a card but unlawfully retains it with the intention to use it to obtain money, goods, services or anything else of value.

Clause 23 seeks to amend section 11 of the Act to make it an offence where a person uses force to get a cardholder or a person in possession of a card to use it, or to disclose the card number to him or another person, in order to obtain money, goods, services or anything else of value.

Clause 24 seeks to amend section 12 of the Act to make it a summary offence for a person authorized by a creditor to furnish goods, services or anything else of value or an agent or employee of such an authorized person to intentionally remit a record of sale to the creditor showing a purchase by a cardholder when in fact no such sale took place.

Clause 25 seeks to effect a consequential amendment to section 15 of the Act.

Clause 26 seeks to amend the Act, by inserting a section 21, to provide that summary offences committed under the Act may be prosecuted any time within a year of the commission of the offence and not within six months.

BILL

AN ACT to amend the Evidence Act, Chap. 7:02; the Larceny Act, Chap. 11:12; the Bail Act, 1994; the Negotiable Instruments (Dishonoured Cheques) Act, 1998; the Forgery Act, Chap. 11:13; and the Electronic Transfer of Funds Crime Act, 2000.

[, 2004]

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:—

1. This Act may be cited as the Administration of Short title Justice (Miscellaneous Provisions) Act, 2004.

PART I

EVIDENCE IN CRIMINAL PROCEEDINGS

Interpretation
Chap.7:02

2. In this Part “the Act” means the Evidence Act.

New sections 15A,
15B and 15C
inserted

3. The Act is amended by inserting after section 15, the following new sections:

“Use of
samples as
evidence

15A. (1) A sample of any—

(a) dangerous drugs within the meaning of section 3(1) of the Dangerous Drugs Act, 1991; or

Act No. 38
of 1991

(b) other substance which has been seized by the police for the purpose of a criminal investigation, shall, subject to section 15D, be admitted as evidence in a criminal trial if the requirements of this section have been complied with in relation to the sample.

(2) A police officer, in the presence of the accused and a Justice of the Peace, shall—

(a) take the sample from the bulk of the dangerous drugs or other substance of which it is a part and weigh the sample and the substance from which the sample was taken;

(b) secure the sample in a container that is wrapped and sealed; and

(c) sign and initial the container,

and the Justice of the Peace shall also sign and initial the container.

(3) Where subsection (2) has been complied with in relation to a sample, the police officer who took the sample shall sign and date a certificate in the form in the Fourth Schedule (which certificate shall be countersigned and dated by the Justice of the Peace), and shall forward the certificate, along with the sample, to the Commissioner of Police.

(4) The Commissioner of Police shall send the sample to the Trinidad and Tobago Forensic Science Centre for analysis or examination by a Government expert.

(5) Where a Government expert has made an analysis or examination of a sample referred to him under subsection (4), he shall prepare and sign a report and send the report to the Commissioner of Police—

- (a) stating that the sample was referred to him by the Commissioner;
- (b) specifying the nature and the amount of the sample; and
- (c) setting forth the result of his analysis or examination.

(6) Within fourteen days of receipt of a certificate under subsection (3) or of a report under subsection (5), whichever is later, the Commissioner shall caused to be served copies of the certificate and the report on the accused or his attorney-at-law or his agent.

(7) For the purpose of this section, “agent” means a person authorised in writing by the accused to act on his behalf.

Certificate and report under section 15A to be prima facie evidence

15B. In any criminal proceedings in which it is desired to use a sample in evidence by virtue of section 15A, the originals of a certificate rendered under section 15A(3), and of a report made under section 15A(5), relating to the sample shall, without further proof, be prima facie evidence of the matters respectively stated in the certificate and the report.

Commissioner to dispose of bulk

15C. As soon as may be practicable after receiving a report under section 15A(5) relating to a sample, the Commissioner of Police shall dispose of the remainder of the substance from which the sample was taken by destroying it or otherwise dealing with it as the circumstances may require.”.

New Schedule inserted

4. The Act is amended by inserting after the Third Schedule the following new Schedule:

“FOURTH SCHEDULE

[Sec. 15A(2)]

CERTIFICATE OF SAMPLE OF SEIZED SUBSTANCE

I HEREBY CERTIFY that on theday of.....20..., I took a sample offrom the bulk and that the bulk was weighed, and the sample was taken and weighed in the presence of

Name of Justice of Peace

Weight of bulkgms/kgs

Weight of samplegms/kgs

..... Name and Rank of Police Officer

..... Signature of Police Officer

Date.....

The above sample was done, and this Certificate was signed, before me:

Name:.....

Signature of Justice of the Peace:

Date:”.

5. Section 19 of the Act is amended—

(a) by inserting after subsection (2A), the following subsections:

“ (2B) Where any substance or thing is required to be submitted to a Government expert for examination, analysis or report, that substance or thing can be lawfully received by any person duly authorized by the Director of the Trinidad and Tobago Forensic Science Centre.

(2C) Where a duly authorized person, mentioned in subsection (2B), receives any substance or thing he shall maintain a record stating the date on and time at which and the name and signature of the person from whom he received the substance or thing, and the date on and time at which it was taken and the name and signature of the Government expert who takes it from him for examination, analysis or report.

(2D) Subsections (2B) and (2C) do not in any manner affect the admissibility into evidence of a document referred to in subsection (2A).”; and

(b) in subsection (4), by—

- (i) deleting the word “and” occurring at the end of paragraph (g);
- (ii) renumbering paragraph (h) as (i); and
- (iii) inserting after paragraph (g) the following new paragraph:

“(h) a Fingerprint Technician from the Criminal Records Office; and”.

PART II

EXTENSION OF TIME TO PROSECUTE CERTAIN SUMMARY
OFFENCES

Interpretation
Chap 11:12

6. In this Part, “the Act” means the Larceny Act.

New section
30A inserted

7. The Act is amended by inserting after section 30, the following section:

“Limitation of
time for
prosecution
in certain
cases **30A.** An offence committed under section 28, 29, 30 or 35(1) may be prosecuted at any time within twelve months after the commission of the offence.”.

Section 35
amended

8. Section 35 of the Act is amended by deleting subsection (1) and substituting the following subsection:

“ (1) A person who receives any property knowing the same to have been stolen or otherwise unlawfully come by or obtained commits an offence and is liable on summary conviction to imprisonment for five years.”.

PART III

BAIL

Interpretation
Act No. 18 of 1994

9. In this Part, “the Act” means the Bail Act, 1994.

Section 6 amended

10. Section 6 of the Act is amended—

(a) in subsection (2) by deleting the words “or convicted”; and

(b) in subsection (3) by deleting the word “shall” and substituting the word “may”.

Section 6A inserted

11. The Act is amended by inserting after section 6, the following new section:

“Appeals **6A.** (1) Where a person—
(a) is convicted by a Magistrates’ Court for an offence punishable with imprisonment;

- (b) appeals; and
- (c) is refused or granted bail by the High Court,

he or the police, as the case may be, may appeal the decision of the High Court to the Court of Appeal.

(2) Where an appellant seeks bail under subsection (1), the Court of Appeal may—

- (a) grant bail; or
- (b) deny bail if the Court is satisfied that there are no special circumstances to justify the granting of bail,

to the appellant.

(3) Where the police appeals a decision of the High Court to grant bail under subsection (1), the Court of Appeal may—

- (a) dismiss the appeal and uphold the decision of the High Court;
- (b) allow the appeal, revoke the grant of bail and order that the person be arrested; or
- (c) vary the conditions of the bail.”.

12. The Act is amended by inserting after section 11, New section 11A inserted the following new section—

“Right of appeal

11A. (1) Where an application is made to the High Court under section 11(1) and the High Court refuses or grants the application or varies the conditions, the accused person or the police, as the case may be, may appeal that decision to the Court of Appeal.

(2) Where the Court of Appeal hears an appeal under subsection (1), the Court of Appeal may make any order as it thinks just.

(3) No appeal shall lie from an order of the Court of Appeal made under subsection (2).”.

PART IV
DISHONoured CHEQUES

Interpretation
Act No. 9 of 1998

13. In this Part, “the Act” means the Negotiable Instruments (Dishonoured Cheques) Act, 1998.

Section 2
amended

14. Section 2 of the Act is amended by inserting after subsection (5) the following new subsection:

“ (6) Where a drawer knowingly obtains or causes another person to obtain property or services by use of a dishonoured cheque and that cheque is lost, stolen, destroyed or cannot be found for any reason and he issues or utters a second cheque in relation to the same transaction and the second cheque is also dishonoured, the second cheque is deemed to be the dishonoured cheque for the purpose of this Act.”.

Section 3
amended

15. Section 3 of the Act is amended—

- (a) in subsection (1) by inserting after the words “by use of” the words “or in contemplation of a”;
- (b) in subsection (2)(a)(i) by inserting after the words “he obtains” the words “or knowingly causes another person to obtain”;
- (c) in subsection (2)(c) by inserting after the words “without the” the word “written”; and
- (d) by inserting after subsection (2) the following new subsection:

“ (3) For the avoidance of doubt, an offence under this Act is committed at the time when a cheque is presented for payment and it is dishonoured.”.

16. Section 4 of the Act is amended—Section 4
amended

(a) in subsection (1)(b)(i) by inserting after the words “of its utterance” the words “or any other time before it is presented for payment”;

(b) in subsection (2) by—

(i) deleting the word “may” and substituting the word “shall”; and

(ii) inserting after the words “cheque with a” the word “certified”;

(c) in subsection (3)—

(i) in paragraph (a) by inserting after the words “of the” the words “certified copy of the”; and

(ii) in paragraph (b) by inserting after the words “with a” the word “certified” ; and

(d) by inserting after subsection (4) the following new subsections :

“ (5) A copy of every dishonoured cheque together with a certified copy of the notice or protest issued by the drawee shall be retained by the drawee for one year.

(6) Without prejudice to subsection (3), where the drawee fails to issue a notice or protest, the payee may, by written notice in any form, notify the drawer that the cheque has been dishonoured and enclose a copy of the dishonoured cheque, and the written notice shall constitute *prima facie* evidence that the cheque is a dishonoured cheque.

(7) Without prejudice to subsections (3) or (6), where a person makes a written confession admitting that he committed an offence under this Act, subsections (3) or (6) shall not apply.”.

Section 8 inserted **17.** The Act is amended by inserting after section 7 the following new section:

“Limitation of time for prosecution in summary cases 8. Notwithstanding any law to the contrary, an offence committed under this Act and punishable summarily may be prosecuted at any time within one year after the commission of the offence.”.

PART V

FORGERY

Section 5A inserted
Chap.11:13

18. The Forgery Act is amended by inserting after section 5 the following new section:

“Fraudulent driving permit or national identification card Chap. 48:50 Chap. 2:01 5A. (1) A person who, with intent to defraud or deceive, commits forgery of a driving permit, provisional permit or learner’s permit issued under the Motor Vehicles and Road Traffic Act, or a national identification card issued under the Representation of the People Act is liable on summary conviction to imprisonment to five years.

(2) A person who, without lawful authority or excuse, the proof which shall lie on him—

(a) purchases or receives from any person;

(b) uses; or

(c) has in his custody or possession, a forged document mentioned in subsection (1), knowing the same to be forged, is liable on summary conviction to imprisonment for five years.

(3) Notwithstanding any law to the contrary, an offence committed under this section may be prosecuted at any time within one year after the commission of the offence.”.

PART VI

ELECTRONIC TRANSFERS

19. In this Part, “the Act” means the Electronic Transfer of Funds Crime Act, 2000. Interpretation Act
No. 87 of 2000

20. Section 2 of the Act is amended as follows: Section 2 amended

- (a) in the definition of “cardholder” after the words “smart card” insert the words “or whose name is not on such a card but”; and
- (b) in the definition of “creditor”—
 - (i) after the words “to supply” insert the words “money,”; and
 - (ii) after the words “of such” insert the word “money”.

21. Section 4 of the Act is amended— Section 4 amended

- (a) in paragraph (a) by deleting the word “or”;
- (b) in paragraph (b) by deleting the word “,” and inserting the words “; or”; and
- (c) by inserting after paragraph (b) the following new paragraph:
 - “(c) a person authorized in writing by the cardholder to use the card,”.

Section 4A
inserted

22. The Act is amended by inserting after section 4 the following new section:

“Obtaining
control of
card with
intent to
use it

4A. A person who receives or is given possession, custody or control of a card—

(a) by or with the knowledge or consent of the cardholder;

(b) by a person holding or having possession of the card with the consent of the cardholder; or

(c) by a person authorized in writing by the cardholder to use the card,

and who unlawfully retains possession, custody or control of the card with intent to use it and uses it to obtain money, goods, services or anything else of value commits an offence and is liable on—

(i) summary conviction to a fine of fifty thousand dollars and to imprisonment for five years; or

(ii) conviction on indictment to a fine of eighty thousand dollars and to imprisonment for seven years.”.

Section 11 amended

23. The Act is amended by—

(a) renumbering section 11 as section 11(1);
and

(b) inserting after the renumbered subsection (1) the following new subsection:

“ (2) A person who by any means forces a cardholder or a person holding or having possession of the card with the consent of the cardholder or any

person authorized in writing by the cardholder to use the card—

- (a) to obtain money, goods, services or anything else of value for him; or
- (b) to disclose his password or card number to him or another person for the purpose of obtaining money, goods, services or anything else of value,

commits an offence and is liable on—

- (i) summary conviction to a fine of fifty thousand dollars and to imprisonment for five years; or
- (ii) conviction on indictment to a fine of eighty thousand dollars and to imprisonment for seven years.”.

24. The Act is amended—

Section 12 amended

- (a) in section 12(4) by inserting after the words “of a card” the words “or a card”; and
- (b) by inserting after subsection (4) the following new subsection:

“ (5) A person authorized by a creditor to furnish goods, services or anything else of value or an agent or employee of such an authorized person who intentionally remits to the creditor a card transaction record of a sale that was not made by a

cardholder or a person holding or having possession of the card with the consent of the cardholder or a person authorized in writing by the cardholder to use the card under subsection (4) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for two years.”.

Section 15 amended **25.**Section 15(1) of the Act is amended by inserting after the words “purchases any” the words “money,”.

Section 21 inserted **26.** The Act is amended by inserting after section 20 the following new section:

“Limitation of time for prosecution in summary cases **21.** Notwithstanding any law to the contrary, an offence committed under this Act and punishable summarily may be prosecuted at any time within one year after the commission of the offence.”.

Passed in the House of Representatives this _____ day of _____, 2004.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this _____ day of _____, 2004.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 23 of 2004

THIRD SESSION
EIGHTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Evidence Act, Chap. 7:02; the Larceny Act, Chap. 11:12; the Bail Act, 1994; the Negotiable Instruments (Dishonoured Cheques) Act, 1998; the Forgery Act, Chap. 11:13; and the Electronic Transfer of Funds Crime Act, 2000.

Received and read the

First time.....

Second time.....

Third time.....