

BILL AS AMENDED IN THE HOUSE OF REPRESENTATIVES

THE MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL, 2006

EXPLANATORY NOTE

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

The purpose of the Bill is to empower constables to demand specimens of breath and in certain instances, specimens of blood from persons thought to be driving under the influence of alcohol.

Clause 2 of the Bill would give effect to the Act for which this is the Bill, even though it would be inconsistent with sections 4 and 5 of the Constitution.

Clause 3 would provide the interpretation.

Clause 4 would amend section 70 of the Motor Vehicles and Road Traffic Act, Chap. 48:50 to increase the penalties under subsection (1) and to give the Court a discretion relating to disqualification from holding a driving permit.

Clause 5 would amend the Act by inserting new sections 70A, 70B, 70C, 70D, 70E, 70F, 70G and 70H.

Under clause 5, the proposed section 70A would create the offence of driving or attempting to drive or being in charge of a motor vehicle while the concentration of alcohol in the blood exceeds the prescribed limit. Conviction for the offence could result in disqualification for holding or obtaining a driving permit.

The proposed section 70B would empower a constable, whether in uniform or not to submit a person to a breath test where the constable reasonably suspects the person of driving, attempting to drive or being in charge of a motor vehicle on a road or public place or having driven or attempted to drive or being in charge of a motor vehicle or committed an offence on such road or public place with alcohol in his breath in excess of the prescribed limit.

Section 70B as proposed would also empower the constable to require a person involved in a motor vehicle accident to provide a specimen of breath for testing at **or near the place where the requirement was made** or at a police station nearby. Where the driver is a patient at a hospital, he may be required to provide a specimen of breath only where the medical practitioner in charge of the case does not object to the test on medical grounds.

A constable would **also** have the power to arrest without warrant, a person who is found to have alcohol in his breath in excess of the prescribed limit except that the person may not be arrested while he is a patient at a hospital.

Under section 70C as proposed, a person who fails to undergo a breath test or whose tested breath was found to contain alcohol in excess of the prescribed limit could be required to submit to a breath analysis conducted by an authorized constable **near the place where the requirement was made or** at a police station.

A person believed to have been involved in an accident within the preceding two hours and which resulted in death or serious injury could **under certain circumstances** be required to submit to a breath test at his home.

The proposed section **70C** would also set out the procedure to be followed subsequent to a person submitting to a breath test. Refusal to submit to a breath analysis or any attempt to alter the concentration of alcohol in the breath or blood would constitute an offence liable to a fine or imprisonment.

The proposed section 70D would deal with laboratory tests. A constable could, therefore, require a person under investigation for dangerous driving or driving with blood alcohol levels in excess of the prescribed limit, to provide a specimen of blood for a laboratory test where the person is physically unable to provide a specimen of breath for testing. The exception would be where the provision of the specimen would in the opinion of the medical practitioner in charge of the case, be prejudicial to the proper care or treatment of the person.

The proposed section 70E would deal with refusal to consent to **the** taking of or providing specimens of blood. Refusal would constitute an offence punishable by a fine or imprisonment.

The proposed section 70F would speak to ancillary provisions respecting evidence in proceedings **relating to offences committed** under section 70A.

The proposed section 70G would define terms used in the proposed new sections.

The proposed section 70H would empower the Minister to make regulations for carrying out or giving effect to the measures propounded, **subject to affirmative resolution of Parliament.**

BILL

AN ACT to amend the Motor Vehicles and Road Traffic Act, Chap. 48:50

Preamble WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution, and if any Act does so declare it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13, that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three fifths of all members of the House:

And whereas it is necessary and expedient that this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

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

Short title 1.**(1)** This Act may be cited as the Motor Vehicles and Road Traffic (Amendment) Act, 2006.

(2) This Act shall come into operation on such day as may be fixed by the President by Proclamation.

Act inconsistent with the Constitution 2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation Chap. 48:50 3. In this Act, "the Act" means the Motor Vehicles and Road Traffic Act.

Section 70 amended 4. Section 70 of the Act is amended -

- (a) in subsection (1) by deleting the words “two thousand” and “four thousand” and substituting the words “five thousand and “ten thousand”, respectively;
- (b) by repealing subsection (2) and substituting the following subsection:

“ (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 twelve months from the date of the conviction for holding or obtaining a driving permit; and
- (b) a third conviction for a like offence, shall be permanently disqualified for holding or obtaining a driving permit;

- (c) by inserting after subsection (3), the following subsection:

“ (4) The Minister may by Order approve the device to be used for the detection of drugs pursuant to subsection (1).”.

Act amended

5. The Act is amended by inserting immediately before section 71, the following sections:

"Driving or being in charge of vehicle while blood alcohol levels exceed prescribed limit

70A.(1) No person shall 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.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable –

(a) in the case of a first conviction, to a fine of five thousand dollars or to imprisonment for six months; and

(b) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months.

(3) 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 twelve months from the date of the conviction for

holding or obtaining a driving permit; and

(b) a third conviction for a like offence, shall be permanently disqualified for holding or obtaining a driving permit.

(4) No person shall 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.

(5) Any constable in uniform or on showing his authority as a member of the Police Service may arrest without a warrant, any person committing an offence under this section.

Breath test

70B.(1) Where a constable in uniform or on showing his authority as a member of the Police Service 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 70;

(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 constable in uniform or on showing his authority as a member of the Police Service may, subject to subsection (4), require any person whom he has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident, to provide a specimen of breath for a breath test either at or near the place where the requirement is made or, if the constable thinks fit, at a police station specified by him being a police station in reasonable proximity to that place.

(4) Where **a** person referred to in subsection (3) is at a hospital as a patient, he may be required by the constable 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 provisions 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** is guilty of an offence and shall be liable on conviction to a fine of five thousand dollars or to imprisonment for six months.

(6) A constable 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 constable under subsection (1), (3), **(4) or (8)** to provide a

specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit, the constable may, without prejudice to section 70(3) **and 70A(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 70(3) **or 70A(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, by Order, approve the device to be used for the purpose of obtaining an indication of alcohol in a person's breath.

Breath
analysis

70C.(1) Subject to subsections (2) and (3) where –

(a) any person required by a constable under section 70B to undergo a breath test fails to undergo that test; or

(b) in consequence of a breath test carried out under section 70B, it is indicated that there may be present in that person's breath, a concentration of alcohol in excess of the prescribed limit,

the constable may require that person to submit, in accordance with the directions of the constable, 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 constable authorized 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 constable 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 constable 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 constable 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 constable 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 constable 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 constable 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 Police Service; 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 70B (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,

is guilty of an offence and is liable –

- (c) in the case of a first conviction, to a fine of six thousand dollars or to imprisonment for six months; and
- (d) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months.

(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 constable operating the breath analyzing instrument shall deliver to that person, a statement in writing signed by that constable 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 70, 70A or **70C** -

- (a) evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analyzing instrument operated by the constable authorized 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 constable certifying that -

- (a) he is authorized by the Minister **to whom** responsibility for national security **has been assigned**, to operate breath analyzing 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 analyzing 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 that breath

analyzing instrument and expressed in microgrammes of alcohol in one hundred milliliters 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 constable named therein is authorized to operate breath analyzing 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.

Laboratory tests

70D.(1) Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under section 70A, a constable 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 constable 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 70F.

(5) For the purposes of this section and sections 70A, 70E and 70F, 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
- (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.

Refusal to consent to taking of or providing specimen

70E.(1) Any person who is under investigation in relation to an offence under section 70A and who refuses to provide a specimen of blood for a blood test when required to do so under section 70D(1), is guilty of an offence and shall be liable –

- (a) in the case of a first conviction, to a fine of six thousand dollars or to imprisonment for six months; and
- (b) in the case of a second or subsequent conviction, to a fine of ten thousand dollars or to imprisonment for twelve months.

(2) A person shall not be treated as failing to provide a specimen of blood if he is unable to do

so **for the reason set out in section 70D(2)**.

Ancillary provisions as to evidence in proceedings for an offence under section 70A or 70B

70F.(1) For the purposes of any proceedings for an offence under section 70A, a certificate signed by an authorized 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 70A, 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 counsel **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 70A 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.

70G.(1) In sections 70A to 70F, except so far as the context otherwise requires -

Interpretation
of sections

70A to 70F

“authorized analyst” means a person designated as such by the Minister **to whom responsibility for health is assigned, under section 70F(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 70C(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 70B(9);**

“constable” means a member of the Police Service;

“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

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for in-patients or out-patients and includes **a laboratory accredited under the Standards Act and recognized 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;

“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 70B 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.

Regulations

70H. The Minister may, **subject to affirmative resolution of Parliament**, make regulations for

giving effect to the purposes and provisions of sections 70A to 70G.

Passed in the House of Representatives this day of , 2006.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all members of the House, that is to say, by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2006.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all members of the Senate, that is to say, by the votes of _____ members of the Senate.

Clerk of the Senate

I confirm the above.

President of the Senate