



**POLICE AND TRANSPORT LEGISLATION
(AMENDMENT) (ALCOHOL TESTING) BILL 2016**

(NO. 2 OF 2016)



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BILL

Entitled

AN ACT TO AMEND THE POLICE ACT 2013, THE CIVIL AVIATION ACT 2008, THE ROAD TRANSPORT ACT (CAP. 131) AND THE SHIPPING ACT 1998 TO PROVIDE FOR TESTING FOR BLOOD ALCOHOL CONTENT AND RELATED OFFENCES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

**POLICE AND TRANSPORT LEGISLATION (AMENDMENT)
(ALCOHOL TESTING) BILL 2016**

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**POLICE AND TRANSPORT LEGISLATION (AMENDMENT)
(ALCOHOL TESTING) BILL 2016**

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Police and Transport Legislation (Amendment) (Alcohol Testing) Act 2016*.

2 Commencement

This Act commences on the day appointed by the Minister by *Gazette* notice.

Part 2 Amendment of Police Act 2013

3 New Part 4A

The *Police Act 2013* is amended by inserting the following after section 111:

“Part 4A Alcohol testing

111A Definitions

In this Part:

“accident” means:

- (a) a collision between a vehicle and another vehicle or a person, animal or object; or
- (b) another incident involving a vehicle in which the vehicle is damaged;

“additional breath test” means a breath test conducted under section 111C;

“breath test” means a test of a sample of a person's breath to assess:

- (a) whether there is alcohol present in the person's breath or blood; and
- (b) if alcohol is present, the concentration of alcohol;

"health practitioner" means:

- (a) a medical practitioner as defined in section 2 of the *Medical and Dental Practitioners Act* (Cap. 102); or
- (b) a nurse as defined in section 3 of the *Nursing Council Act* (Cap. 104);

"preliminary breath test" means a breath test conducted under section 111B;

"prescribed device" means a device prescribed by the Minister by *Gazette* notice for conducting breath tests under this Part;

"prescribed level" means a concentration of 50 milligrams or more of alcohol in 100 millilitres of blood (0.05%);

"motor vehicle" means a motor vehicle as defined in section 2 of the *Road Transport Act* (Cap. 131);

"vehicle" means any of the following:

- (a) a motor vehicle;
- (b) a vessel as defined in section 207A of the *Shipping Act 1998*;
- (c) an aircraft as defined in section 2 of the *Civil Aviation Act 2008*.

111B Power to conduct preliminary breath tests

- (1) Subject to section 111D, a police officer may require a person to submit to one or more breath tests in accordance with the officer's directions if:
 - (a) the officer finds the person driving or in charge of a vehicle; or
 - (b) the officer finds the person occupying the driving seat of a vehicle and attempting to put the vehicle in motion; or

- (c) the officer has reasonable cause to suspect that:
 - (i) the person was, within the previous hour, driving or in charge of a vehicle; and
 - (ii) at the time the person was driving or in charge of the vehicle, it was involved in an accident.
- (2) Subsection (1)(a) and (b) only apply in relation to a motor vehicle if the motor vehicle is on a road.
- (3) For the purpose of conducting a preliminary breath test, a police officer may request or signal the driver of a vehicle to stop the vehicle.

111C Power to conduct additional breath test

- (1) This section applies if the result of a preliminary breath test indicates that the concentration of alcohol in a person's blood is at or above the prescribed level.
- (2) Subject to section 111D, a police officer may:
 - (a) require the person to submit to an additional breath test in accordance with the officer's directions; and
 - (b) require the person to accompany a police officer to a police station or post to conduct the breath test; and
 - (c) detain the person for the minimum period required to conduct the breath test (including any time required to transport the person to a police station or police post to conduct the test).

111D When breath test must not be conducted

- (1) A police officer must not require a person to submit to a breath test if it appears to the officer that:
 - (a) the person is injured, and the officer is satisfied it may be detrimental to the person's medical condition for the person to provide a sample of breath; or
 - (b) the person is, as a result of a medical condition, physical disability or other physical condition, otherwise incapable of

providing a sample of breath.

- (2) A health practitioner may take a sample of the person's blood and give it to a police officer for analysis to determine the concentration of alcohol:
 - (a) with the person's consent; or
 - (b) if the person is incapable of consenting, without the person's consent.
- (3) The health practitioner is not civilly or criminally liable, and does not breach any professional code of ethics or conduct, for taking the sample and giving it to the police officer.

111E Conduct of breath test

A breath test may only be conducted:

- (a) by a police officer; and
- (b) using a prescribed device.

111F Right to request blood test

- (1) This section applies if the result of a breath test indicates that the concentration of alcohol in a person's blood is at or above the prescribed level.
- (2) The person may request that a sample of his or her blood be taken by a health practitioner and analysed to determine the concentration of alcohol.
- (3) A police officer must make arrangements that are reasonable in the circumstances to enable the sample of blood to be taken.
- (4) A police officer must be present when the sample is taken and approximately half of the sample (which must be at least an amount sufficient to ascertain the concentration of alcohol in the sample) must be given to the police officer.
- (5) In proceedings for an offence against this or another Act, the blood sample is only admissible as evidence of the concentration of alcohol in the person's blood if it was taken no more than 2 hours

after the additional breath test was conducted on the person.

111G Evidentiary certificates

- (1) As soon as practicable after a police officer conducts a breath test on a person that indicates that the concentration of alcohol in the person's blood is at or above the prescribed level, the officer must:
 - (a) complete in duplicate a certificate detailing the conduct and result of the test in the form specified in Commissioner's Orders issued under section 13; and
 - (b) give one copy of the certificate to the person.
- (2) In proceedings for an offence against this or another Act, a copy of the certificate is evidence of the facts stated in it in the absence of proof to the contrary.

111H Presumption as to concentration of alcohol

In proceedings for an offence against this or another Act, if it is established that, at any time within 2 hours after the alleged offence was committed, a certain concentration of alcohol was present in a person's blood, it is presumed that at least that concentration of alcohol was present in the person's blood at the time at which the alleged offence was committed in the absence of proof to the contrary.

111I Consuming alcohol after accident or preliminary breath test

- (1) A person commits an offence if the person consumes alcohol within 2 hours after:
 - (a) driving or being in charge of a vehicle when it was involved in an accident; or
 - (b) undergoing a preliminary breath test that indicates that the concentration of alcohol in the person's blood is at or above the prescribed level.

Penalty: 5,000 penalty units or imprisonment for 6 months, or both.

- (2) Subsection (1)(a) does not apply if, at the time the person

consumes the alcohol:

- (a) the person has undergone a preliminary breath test that indicates that the concentration of alcohol in the person's blood is below the prescribed level; or
 - (b) the person reasonably believes that the accident did not occur.
- (3) Subsection (1)(b) does not apply if, at the time the person consumes the alcohol, the person has undergone an additional breath test that indicates that the concentration of alcohol in the person's blood is below the prescribed level."

4 Amendment of section 179

Section 179 of the *Police Act 2013* is amended by deleting "5000 penalty units or six months" and substituting "10,000 penalty units or 12 months".

Part 3 Amendment of Civil Aviation Act 2008

5 New section 184A

The *Civil Aviation Act 2008* is amended by inserting the following after section 184:

"184A Presence of alcohol in person's blood

A person commits an offence if, while there is present in the person's blood a concentration of alcohol of 50 milligrams or more in 100 millilitres of blood, the person:

- (a) operates an aircraft; or
- (b) occupies a pilot's seat of an aircraft and attempts to put the aircraft in motion.

Penalty:

- (a) for a first offence – 10,000 penalty units or imprisonment for 12 months, or both;
- (b) for a second or subsequent offence – 20,000 penalty units or

imprisonment for 2 years, or both.”

Part 4 Amendment of Road Transport Act (Cap. 131)

6 Amendment of section 43

(1) Section 43(1)(b) of the *Road Transport Act* (Cap. 131) is deleted and replaced with the following:

“(b) on conviction by the Magistrates’ Court:

(i) for a first offence – 10,000 penalty units or imprisonment for 12 months, or both;

(ii) for a second or subsequent offence – 20,000 penalty units or imprisonment for 2 years, or both.”

(2) Section 43(4) of the *Road Transport Act* (Cap. 131) is amended by deleting “subsection (1)” and substituting “subsection (1) or section 43A”.

7 New section 43A

The *Road Transport Act* (Cap. 131) is amended by inserting the following after section 43:

“43A Presence of alcohol in person’s blood

(1) A person commits an offence if, while there is present in the person’s blood a concentration of alcohol of 50 milligrams or more in 100 millilitres of blood, the person:

(a) drives or is in charge of a motor vehicle; or

(b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion.

Penalty:

(a) if the person is convicted in the High Court – 20,000 penalty units or imprisonment for 2 years, or both;

(b) if the person is convicted in the Magistrates’ Court:

- (i) for a first offence – 10,000 penalty units or imprisonment for 12 months, or both;
 - (ii) for a second or subsequent offence – 20,000 penalty units or imprisonment for 2 years, or both.
- (2) If a person who is convicted of an offence under this section has previously been convicted of an offence under section 43(1), the offence under this section is taken to be a second or subsequent offence.
- (3) Without limiting subsection (1)(a), a person is in charge of a vehicle:
 - (a) if:
 - (i) the person holds a full driving licence; and
 - (ii) the driver of the vehicle holds a provisional driving licence; and
 - (iii) the person is accompanying the driver of the vehicle as required by regulation 17(1)(a) of the *Road Transport Regulations*; or
 - (b) if the person is a driving test examiner testing the driving ability of the driver of the vehicle.”

8 Amendment of Schedule

The Schedule, Part I of the *Road Transport Act* (Cap. 131) is amended by inserting the following after item 5:

“6. An offence under section 43A (presence of alcohol in person’s blood).”

Part 5 Amendment of Shipping Act 1998

9 New Part XIII heading

The heading to Part XIII of the *Shipping Act 1998* is deleted and replaced with the following:

“Part XIII Legal proceedings and general offences”

10 New section 207A

The *Shipping Act 1998* is amended by inserting the following after section 207:

“207A Presence of alcohol in person’s blood

(1) A person who is in charge of a vessel commits an offence if, while there is present in the person’s blood a concentration of alcohol of 50 milligrams or more in 100 millilitres of blood, the person:

- (a) operates the vessel; or
- (b) attempts to put the vessel in motion.

Penalty:

- (a) for a first offence – 10,000 penalty units or imprisonment for 12 months, or both;
- (b) for a second or subsequent offence – 20,000 penalty units or imprisonment for 2 years, or both.

(2) In this section:

“vessel” means a vessel as defined in section 2, but does not include a vessel less than 3 metres in length:

- (a) that is not propelled by an engine; or
- (b) that is propelled by an engine of 10 horsepower or less.”

POLICE AND TRANSPORT LEGISLATION (AMENDMENT) (ALCOHOL TESTING) BILL 2016

OBJECTS AND REASONS

The object of this Bill is to amend the *Police Act 2013*, the *Civil Aviation Act 2008*, the *Road Transport Act (Cap. 131)* and the *Shipping Act 1998* to provide for testing for blood alcohol content in drivers and operators of vehicles, vessels and aircraft.

The Bill allows police officers to stop drivers and require them to undergo a breath test using a prescribed device. The Bill creates offences for persons who drive or operate vehicles, vessels and aircraft with a blood alcohol level of 50 milligrams or more per 100 millilitres of blood.

HON. STANLEY FESTUS SOFU
MINISTER FOR POLICE, NATIONAL SECURITY AND CORRECTIONAL
SERVICES

POLICE AND TRANSPORT LEGISLATION (AMENDMENT) (ALCOHOL TESTING) BILL 2016

EXPLANATORY MEMORANDUM

PART 1

Clause 1 provides for the short title of the Act.

Clause 2 provides for the commencement date of the Act. The commencement date is to be on the day appointed by the Minister.

PART 2

Clause 3 provides for amendments to the Police Act 2013 by inserting a new Part 4A as follows:

Clause 111A provides definitions for the new terms used in the Part 4A.

Clause 111B provides police with the power to stop a motor vehicle that is on a road and require the driver to submit to a preliminary breath test.

Clause 111C provides that police may require a driver to undertake a second breath test at a police post or station if the preliminary test indicates that the driver has a concentration of alcohol about the prescribed limit.

Clause 111D (1) (a) provides that police cannot require a person to submit to a breath test if they are injured and it may be detrimental to the person's health. Sub clause 111D (1)(b) provides that police cannot require a person to submit to a breath test if they are incapable of providing a breath sample. Clause 111D (2) allows a health practitioner to take blood sample and give it to the police for analysis.

Clause 111E provides that a breath test may only be conducted by a police officer using a prescribed device.

Clause 111F provides that a person who has taken a breath test which indicates a concentration of alcohol at or above the prescribed limit, may request a blood sample be taken for testing. The clause requires the blood sample to be taken in the presence of a police officer. The police officer must be provided with a portion of the blood sample. The blood sample is

only admissible in evidence if it was taken no more than 2 hours after the second breath test.

Clause 111G provides that a police officer must provide a certificate detailing the conduct and result of the breath test if the second test indicates a concentration of alcohol at or above the prescribed limit. The police officer must give a copy to the person. The certificate is evidence of the facts stated in the absence of proof to the contrary.

Clause 111H provides that if a person had a certain concentration of alcohol in their blood with 2 hours of an alleged offence, there is a presumption that they had at least that amount in their blood at the time of the offence.

Clause 111I creates an offence for a person to consume alcohol within two hours of being involved in an accident or after giving a breath sample in a preliminary test that indicated a concentration of alcohol at or exceeding the prescribed amount. The offence does not apply to a person who has given a second sample which is below the prescribed limit or who did not know that the accident occurred.

Clause 4 amends section 179 of the Police Act 2013 to increase the penalty for failing to provide a forensic sample from 5000 penalty points to 10,000 penalty points.

PART 3

Clause 5 provides for amendments to the Civil Aviation Act 2008 by inserting a new section 184A

Clause 184A creates an offence for operating an aircraft or occupying the pilot's seat and attempting to put the aircraft in motion whilst under the influence of alcohol with a blood alcohol concentration of 50 milligrams or more per 100 millilitres of blood. The clause provides higher penalties for a second or subsequent offence.

PART 4

Clause 6 amends section 43 of the Road Transport Act (Cap. 131) by providing higher penalties for driving under the influence of alcohol.

Clause 7 amends the Road Transport Act (Cap.131) by adding a new clause 43A.

Clause 43A creates an offence of driving, or attempting to drive with the prescribed concentration of alcohol in the blood. The clause provides higher penalties for second and subsequent offences.

Clause 8 amends the Schedule, Part 1 of the Road Transport Act (Cap.131) to provide that an offence under clause 43A is added to the list of offences which attract a penalty of mandatory licence disqualification.

PART 5

Clause 9 amends the Shipping Act 1998 by adding a new heading to Part X111.

Clause 10 amends the Shipping Act 1998 by inserting a new clause 207A.

Clause 207A creates an offence for a person to operate a vessel or attempt to operate a vessel with a blood alcohol concentration at or above 50 milligrams per 100 millilitres of blood.

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