



ELIZABETHAE SECUNDAE REGINAE

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No. 22 of 1968

**An Act to Amend "The Traffic Acts, 1949 to 1967,"  
in certain particulars**

[ASSENTED TO 22ND APRIL, 1968]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1) **Short title.** This Act may be cited as "*The Traffic Acts Amendment Act of 1968.*"

(2) **Principal Act.** "*The Traffic Acts, 1949 to 1967,*" are in this Act referred to as the Principal Act.

(3) **Collective title.** The Principal Act and this Act may be collectively cited as "*The Traffic Acts, 1949 to 1968.*"

(4) **Commencement of ss. 6 and 7.** Sections six and seven of this Act shall come into operation on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette*.

**2. Amendment of s. 7.** Section seven of the Principal Act is amended by omitting the words, numerals and quotation marks “ “*The Main Roads Acts, 1924 to 1965*” ” wherever they appear and inserting in their stead wherever so omitted the words, numerals and quotation marks “ “*The Main Roads Acts, 1920 to 1965*” ”.

**3. Amendments of s. 7A.** Section 7A of the Principal Act is amended by—

(a) in subsection (1) omitting the words “ The Commissioner ” and inserting in their stead the words “ The Commissioner for Transport, who shall be chairman, the Commissioner ”;

(b) omitting subsection (2);

(c) in subsection (3)—

(i) omitting from paragraph (a) the words, numerals and quotation marks “ with the prior approval of the Minister for the time being administering “ *The Main Roads Acts, 1920 to 1965,* ” ”;

(ii) omitting from paragraph (d) the words, numerals, quotation marks and symbols “, and the said Commissioner shall, if thereunto directed by the Minister for the time being administering “ *The Main Roads Acts, 1920 to 1965,* ” revoke such a delegation.”;

(iii) omitting from paragraph (e) the words, numerals, quotation marks and symbols “, subject in every case to prior approval by the Minister for the time being administering “ *The Main Roads Acts, 1920 to 1965,* ” ”.

**4. Amendments of s. 9 (1).** Subsection (1) of section nine of the Principal Act is amended by—

(a) inserting after the definition “ Address ” the following definition:—  
“ “ Analyst ”—An analyst under and within the meaning of “ *The Health Acts, 1937 to 1967* ” ;”;

(b) inserting after the definition “ Commissioner of Main Roads ” the following definition:—

“ “ Commissioner for Transport ”—The Commissioner for Transport within the meaning of subsection (1) of section five of “ *The State Transport Acts, 1960 to 1965,* ” or the person who for the time being occupies the office or performs the duties of the said Commissioner for Transport ”;

(c) omitting the definition “ Court ” and inserting in its stead the following definition:—

“ “ Court ”—A Magistrates Court constituted under “ *The Justices Acts, 1886 to 1968* ” ;”;

(d) omitting the definition “ Minister ” and inserting in its stead the following definition:—

“ “ Minister ”—The Minister for Transport or other Minister of the Crown for the time being administering this Act ;”;

(e) inserting after the definition “ Police Force ” the following definition:—

“ “ Police station ”—Includes a police office, watch-house, station-house and lock-up ;”.

**5. Amendment of s. 10.** Section ten of the Principal Act is amended by omitting the words “and all other members of the Police Force and the Commissioner of Main Roads” and inserting in their stead the words “the Commissioner for Transport and the Commissioner of Main Roads”.

**6. Amendments of s. 16.** Section sixteen of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the words “two hundred pounds” and inserting in their stead the words “four hundred dollars”; and

(ii) omitting the words “three hundred pounds” and inserting in their stead the words “six hundred dollars”.

(b) omitting subsections (1a) and (1b) and inserting in their stead the following subsections:—

“(1a) (a) Any person who, whilst the concentration of alcohol in his blood equals or exceeds 100 milligrams of alcohol to 100 millilitres of blood—

(i) drives a motor vehicle, tram, train, or vessel; or

(ii) occupies the driving seat of a motor vehicle and attempts to put that motor vehicle in motion; or

(iii) attempts to put in motion a tram, train or vessel; or

(iv) is in charge of a motor vehicle,

shall be guilty of an offence and shall be liable to be convicted thereof in the circumstances prescribed by this subsection.

(b) Where upon the hearing of a complaint of an offence against subsection (1) of this section the Court is satisfied—

(i) as to all the elements of the offence charged other than the element of the defendant’s being under the influence of liquor or a drug at the material time;

(ii) that at the material time the concentration of alcohol in the defendant’s blood equalled or exceeded 100 milligrams of alcohol to 100 millilitres of blood,

the Court shall convict the defendant of the offence under paragraph (a) of this subsection which is established by the evidence;

(c) A person who is convicted under this subsection shall be liable—

(i) if he has not been previously convicted under this subsection to a penalty of two hundred dollars;

(ii) if he has been previously convicted under this subsection once only to a penalty of three hundred dollars; or

(iii) if he has been previously convicted under this subsection more than once to a penalty of four hundred dollars.

(d) A person who is convicted under this subsection shall be disqualified by such conviction from holding or obtaining a driver’s license—

(i) if he has not been previously convicted under this subsection for a period of one month;

- (ii) if he has been previously convicted under this subsection once only, for a period of two months;
  - (iii) if he has been previously convicted under this subsection more than once, for a period of three months.
- (1b) Where upon the hearing of a complaint of an offence against paragraph (d) of subsection (1) of this section, the Court is satisfied beyond reasonable doubt by evidence on oath that at the material time—
- (a) that the defendant,—
    - (i) by occupying a compartment of the motor vehicle in respect of which the offence is charged other than the compartment containing the driving seat of that motor vehicle; or
    - (ii) not being in that motor vehicle, by some action, had manifested an intention of refraining from driving that motor vehicle whilst he was under the influence of liquor or a drug;
  - (b) that the defendant was not under the influence of liquor or a drug to such an extent as to be incapable of understanding what he was doing or as to be incapable of forming the intention referred to in paragraph (a) of this subsection;
  - (c) the motor vehicle in respect of which the offence is charged was parked in such a manner as not to constitute a source of danger to other persons or other traffic; and
  - (d) that the defendant had not been previously convicted of an offence against subsection (1) or (1a) of this section within a period of one year prior to the date in respect of which he is charged.

the Court shall not convict the defendant of the offence charged or of an offence under subsection (1a) of this section.”;

(c) in subsection (4) omitting the words “Subsection one” and inserting in their stead the words, numerals, letter and brackets “Subsections (1) and (1a)”.

7. **New s. 16A inserted.** The Principal Act is amended by inserting after section sixteen the following section:—

“ [16A.] (1) **Provision, as respects alcohol, for breath tests and for laboratory tests for evidentiary purposes.** In this section—

- (a) “breath analysing instrument” means any instrument of a type approved for the purposes of this section by the Governor in Council (who is hereby thereunto empowered) by notice published in the *Gazette* for ascertaining by analysis of a specimen of a person’s breath what concentration of alcohol is present in his blood; and
- (b) “breath test” means a test for the purpose of an indication of the concentration of alcohol in a person’s blood carried out, by means of a device of a type approved for the purpose of such a test by the Minister (who is hereby thereunto empowered) by notification published in the *Gazette*, on a specimen of breath provided by that person.

(2) A member of the Police Force may request any person found by him, or who he suspects on reasonable grounds was during the last two preceding hours,—

- (a) driving a motor vehicle, tram, train, or vessel; or

- (b) occupying the driving seat of a motor vehicle and attempting to put that motor vehicle in motion; or
- (c) attempting to put in motion a tram, train or vessel; or
- (d) in charge of a motor vehicle on a road;

to provide a specimen of breath for a breath test by him when and where he makes the request if such member suspects on reasonable grounds—

- (i) that, having regard to the behaviour of such person in relation to the motor vehicle, tram, train or vessel in question or to the behaviour of the motor vehicle, tram, train or vessel in question, such person has alcohol or any drug in his body; or
- (ii) that in relation to the motor vehicle, tram or train in question such person has committed an offence against this Act during the aforesaid period.

(3) Where a motor vehicle, tram, train or vessel is involved in an incident resulting in injury to or death of any person or damage to any property, a member of the Police Force may request any person who he suspects on reasonable grounds was driving or attempting to drive the motor vehicle, tram, train or vessel or, in the case of a motor vehicle on a road, was in charge of the motor vehicle at the time of the incident to provide a specimen of breath for a breath test by him when and where he makes the request.

(4) Subsections (2) and (3) of this section apply subject to this subsection.

A request shall not be made by virtue of subsection (2) or (3) of this section—

- (a) unless it is made as soon as reasonably practicable and within two hours after the event to which it relates; or
- (b) while the person concerned is at a hospital for treatment unless the medical practitioner in immediate charge of his treatment is first notified of the intention to make the request or if such medical practitioner objects to the provision of a specimen on the ground that its provision or the request to provide it would be prejudicial to the proper care or treatment of such person.

(5) If—

- (a) it appears to a member of the Police Force in consequence of a breath test carried out by him on any person under subsection (2) or (3) of this section that the device by means of which the test is carried out indicates that the concentration of alcohol in that person's blood equals or exceeds 80 milligrams of alcohol to 100 millilitres of blood; or
- (b) a person requested by a member of the Police Force under subsection (2) or (3) of this section to provide a specimen of his breath for a breath test elects not to provide the specimen or, by not exhaling directly into the device indicated by the member of the Police Force who made the request, otherwise fails to provide the specimen forthwith upon his being thereunto requested,

any member of the Police Force may, using such force as is necessary, take such person to a police station or hospital for the purposes of subsection (6) of this section.

This subsection shall be construed so as not to prejudice or affect in any way the provisions of section forty-two of this Act.

(6) **Laboratory tests.** (a) Any person who is arrested under section forty-two of this Act for an offence against section sixteen of this Act or who is taken to a police station or hospital under subsection (5) of this section may, while at the police station or hospital, be required by any member of the Police Force to provide a specimen of his breath for analysis by a breath analysing instrument or, according as such member requires, a specimen of his blood for a laboratory test.

A person to whom this paragraph applies may be detained at a police station or hospital for the purposes of this subsection by a member of the Police Force.

(b) This paragraph (b) applies to any person who may be required by a member of the Police Force under subsection (2) or (3) of this section to provide a specimen of breath for a breath test.

A person while at a hospital for treatment may be required by any member of the Police Force to provide at the hospital a specimen of his breath for analysis by a breath analysing instrument or, according as such member requires, a specimen of his blood for a laboratory test.

A requisition shall not be made by virtue of this paragraph while the person concerned is at a hospital for treatment unless the medical practitioner in immediate charge of his treatment is first notified of the intention to make the requisition or if such medical practitioner objects 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 such person.

(c) Paragraphs (a) and (b) of this subsection apply subject to this paragraph.

If a person who is required pursuant to paragraph (a) or (b) of this subsection to provide a specimen of his breath for analysis forthwith upon being so required produces to the member of the Police Force who made the requisition his driver's license endorsed by a District Superintendent or Superintendent that the qualified medical practitioner named in the endorsement has certified in writing that by reason of a stated illness or disability such person is incapable of providing a specimen of his breath or the provision of such a specimen by him could adversely affect his health, such member of the Police Force shall not require a specimen of breath of such person but shall require a specimen of his blood.

(d) A person who is required pursuant to paragraph (a) or (b) of this subsection to provide a specimen of his breath for analysis shall do so by, forthwith upon being so required, exhaling directly into the breath analysing instrument indicated by the member of the Police Force who made the requisition and operated by a legally qualified medical practitioner.

(e) A person who is required pursuant to paragraph (a) or (b) of this subsection to provide a specimen of his blood for a laboratory test shall do so by, forthwith upon being so required, permitting a legally qualified medical practitioner indicated by the member of the Police Force who made the requisition to take such specimen (any legally qualified medical practitioner being hereby authorized to take such a specimen, whether or not the person concerned consents to the taking).

(f) A person who, upon a requisition duly made by a member of the Police Force under paragraph (a) or (b) of this subsection, fails to provide as prescribed a specimen of his breath for analysis or, as the case may be, a specimen of his blood for a laboratory test shall be guilty of an offence and shall be liable—

- (i) if he has not been previously convicted under this paragraph, to a penalty of two hundred dollars;
- (ii) if he has been previously convicted under this paragraph once only to a penalty of three hundred dollars; or
- (iii) if he has been previously convicted under this paragraph more than once to a penalty of four hundred dollars.

A person who is convicted under this paragraph shall be disqualified by such conviction from holding or obtaining a driver's license—

- (i) if he has not been previously convicted under this paragraph, for a period of one month;
- (ii) if he has been previously convicted under this paragraph once only, for a period of two months;
- (iii) if he has been previously convicted under this paragraph more than once, for a period of three months.

(7) A person (other than a person who has already been arrested for and charged with an offence under subsection (1) of section sixteen of this Act) in respect of whom the analysis by the breath analysing instrument or the laboratory test indicates that the concentration of alcohol in that person's blood equals or exceeds 100 milligrams of alcohol to 100 millilitres of blood, shall be charged with an offence against subsection (1) of section sixteen of this Act according to the provision of that subsection which is appropriate in the circumstances and, if that person has been taken to a police station or hospital pursuant to subsection (5) of this section, may (except where, being thereunto required by the requisition, he has provided a specimen of his blood for a laboratory test) be arrested on that charge.

(8) (a) As soon as practicable after a specimen of breath provided pursuant to the requisition has been analysed by means of a breath analysing instrument the legally qualified medical practitioner operating such instrument shall sign in duplicate a certificate in writing stating the concentration of alcohol indicated by the analysis to be present in the blood of the person whose breath has been analysed (which may be by way of indication on a scale) and the date and time at which the analysis was made and shall deliver—

- (i) one copy of such certificate to the member of the Police Force who made the requisition; and
- (ii) the other copy to the person whose breath has been analysed (or to another person on behalf of that person upon request by that other person).

If the form thereof is prescribed, such certificate shall be in or to the effect of the prescribed form.

(b) Evidence by a legally qualified medical practitioner or by a certificate purporting to be signed by a legally qualified medical practitioner—

- (i) that an instrument operated by him for analysing the breath of any person named by him on any occasion stated by him was a breath analysing instrument;

- (ii) that such instrument was on the occasion in question in proper working order and properly operated by him;
- (iii) that in relation to such instrument all regulations made pursuant to this section with respect to any instrument which is a breath analysing instrument were complied with,

shall be evidence of the matters contained therein and in the absence of evidence to the contrary shall be conclusive such evidence.

The matters referred to in this paragraph may be stated in the certificate referred to in paragraph (a) of this subsection or in a separate certificate.

(c) Evidence by a legally qualified medical practitioner or by a copy of the certificate referred to in paragraph (a) of this subsection purporting to be signed by a legally qualified medical practitioner of the concentration of alcohol indicated to be present in the blood of a person by a breath analysing instrument operated by such legally qualified medical practitioner shall be evidence of the concentration of alcohol present in the blood of the person in question at the time (being in the case of such certificate the date and time stated therein) the breath of that person was analysed and at all material times during the period of two hours before the analysis and, in the absence of evidence to the contrary, shall be conclusive such evidence.

(9) (a) As soon as practicable after a specimen of blood has been provided for a laboratory test pursuant to paragraph (a) or (b) of subsection (6) of this section the member of the Police Force who required such specimen shall deliver the same to an analyst.

Such delivery may be effected either personally or by sending the specimen to the analyst by registered post or certified mail.

(b) A certificate purporting to be signed by an analyst and stating—

- (i) that he received from the member of the Police Force named in the certificate a specimen of the blood of the person named in the certificate provided by that person at the time and place stated in the certificate;
- (ii) that he made a laboratory test of such specimen on the date and at the place and time stated in the certificate; and
- (iii) stating the concentration of alcohol in the blood of such person indicated by the laboratory test (which concentration shall be stated by reference to the number of milligrams of alcohol in the blood to 100 millilitres of blood),

shall be evidence of the matters contained therein and in the absence of evidence to the contrary shall be conclusive such evidence.

(c) Evidence by an analyst or by a certificate referred to in paragraph (b) of this subsection of the concentration of alcohol indicated to be present in the blood of a person by a laboratory test of a specimen of the blood of that person shall be evidence of the concentration of alcohol in the blood of that person at the time when he provided the specimen and at all material times during the period of two hours before he provided it and, in the absence of evidence to the contrary, shall be conclusive such evidence.

(d) The Court shall on the application of the complainant adjourn the hearing as necessary to enable the production in evidence of the certificate of the analyst and if within three days after providing the specimen the defendant has given to the member of the Police Force in charge of the police station at which or nearest to the hospital where the specimen of blood of the defendant was analysed a written statement of

that he requires a copy of the certificate to be given to him at the address stated in the notice shall, at the request of the defendant, adjourn the hearing as necessary to ensure that such copy has been given to the defendant at such address not less than three days before the production of the certificate in evidence.

Such copy may be given either personally or by sending it by registered post or certified mail.

The person who gives the copy (whether personally or by sending it by registered post or certified mail) may attend before any justice of the peace having jurisdiction in the State or part of the State or part of the Commonwealth where he gives the copy and depose on oath and in writing endorsed on a copy of the certificate to the giving thereof.

Such deposition shall, upon production to the Court, be evidence of the matters contained therein and, in the absence of evidence to the contrary, shall be conclusive such evidence.

(10) A person who, being thereunto required pursuant to paragraph (a) or (b) of subsection (6) of this section, has provided a specimen of blood for a laboratory test may when he provides the specimen or immediately after providing it and where he provides it (or another person on behalf of that person may when or immediately after he provides the specimen and where he provides it) request the member of the Police Force who required the specimen in question to give to such person a specimen of blood.

Upon such request, subject to the person concerned then and there providing a second specimen of blood, the member of the Police Force in question shall give such second specimen to such person or to the person requesting it on his behalf.

(11) (a) Any approval given pursuant to this section in respect of a breath analysing instrument or a device for carrying out breath tests by the Governor in Council or the Minister may be revoked at any time in the manner in which it was given and upon such revocation shall cease to have any effect.

(b) The power to make regulations under this Act shall include power to make regulations for or in respect of the maintenance or use of breath analysing instruments and the methods to be employed for ensuring that such instruments give accurate results.

(12) Where—

(a) the analysis by means of a breath analysing instrument of a specimen of breath of a person required by a member of the Police Force to be provided pursuant to paragraph (a) or (b) of subsection (6) of this section indicates that the concentration of alcohol in that person's blood equals or exceeds 80 milligrams of alcohol to 100 millilitres of blood; or

(b) a person so required fails to provide such specimen,

then by virtue of that fact the driver's license of such person shall be suspended for a period of twenty-four hours commencing at the time when the analysis was made or, as the case may be, the requisition was made.

The member of the Police Force who required the specimen shall sign and deliver to the person concerned (or to another person on behalf of that person at the request of that other person) a statement in writing that the driver's license of the person concerned is suspended as prescribed by this subsection for the period of twenty-four hours commencing at the time stated therein.

Notwithstanding any other provision of this Act, an appeal shall not lie in respect of the suspension of a driver's license pursuant to this subsection.

(13) Except at the instance or with the consent of the person who provided the specimen, evidence of the providing of a specimen of breath or blood provided pursuant to paragraph (a) or (b) of subsection (6) of this section and of the result of the analysis of the specimen shall not be led or admitted in any civil proceedings; and the fact of that evidence not being led or that the necessary consent to its being led was withheld shall not be a matter for comment in any such proceedings."

**8. Amendments of s. 20.** Section twenty of the Principal Act is amended by omitting the provisoes.

**9. Amendments of s. 34.** Section thirty-four of the Principal Act is amended by—

(a) omitting from subsection (1) the symbols and words “, with the approval of the Minister”;

(b) in subsection (3) inserting after the words “the Minister” the words “the Commissioner”.

**10. Amendment of s. 57.** Section fifty-seven of the Principal Act is amended by omitting subsection (1) and inserting in its stead the following subsection:—

“(1) Any person aggrieved by the refusal of a District Superintendent or of a Superintendent to issue or renew a license, or by the suspension or cancellation of a license by a District Superintendent, or by the imposition of a condition in respect of a license by or by direction of a District Superintendent or a Superintendent may appeal against such refusal, suspension, cancellation or imposition to the Court.

Notwithstanding the provisions of “*The Justices Acts, 1886 to 1968*,” the decision upon the appeal of the Court shall be final and binding and without appeal.

Upon and by virtue of the commencement of the appeal the cancellation or suspension in question shall be suspended pending the determination of the appeal but, subject to the decision of the Court upon the appeal, that cancellation or suspension shall take effect from the date of the determination of the appeal for that portion of the period for which it was made which had not expired when the appeal was commenced.

This subsection shall be read and construed so that an appeal hereunder shall not lie in respect of the cancellation or suspension of a driver's license by reason of the disqualification from holding or obtaining that license of the licensee upon his conviction or by order of a Judge of the Supreme Court or District Court or of the Court or in respect of the cancellation or suspension of any license by, or at or pursuant to, the order or direction of a Judge of the Supreme Court or District Court or of the Court under any provision of this Act or under any other Act or law.”

**11. Amendments of s. 63.** Section sixty-three of the Principal Act is amended by—

(a) omitting from subsection (1) the words and symbol “, with the approval of the Minister”;

(b) omitting from subsection (3) the words and symbol “, with the approval of the Minister”.

**12. Amendment of s. 67 (1).** Subsection (1) of section sixty-seven of the Principal Act is amended by inserting after the word "Minister", wherever that word appears, the words and symbols "the Commissioner, the Commissioner for Transport,".

**13. Amendment of s. 68.** Section sixty-eight of the Principal Act is amended by inserting before the words "the Commissioner of Main Roads" the words and symbol "the Commissioner for Transport,".