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## REPUBLIC OF NAURU

### MOTOR TRAFFIC (BREATH ANALYSIS) ACT 1973

(No 3 of 1973)

#### *ARRANGEMENT OF SECTIONS*

Section

1. Short title and commencement
2. Amendment to section 7 of the principal Act
3. Amendment to section 9 of the principal Act
4. New sections added to the principal Act
5. New Schedule added to the principal Act
6. Repeal and saving



## **AN ACT**

***To amend the Motor Traffic Act 1937–1972 so as to facilitate proof of the proportion of alcohol in the blood of persons as determined by the use of a breath-analysing instrument***

***(Certified: 16th May 1973)***

***Enacted by the Parliament of Nauru as follows :***

### **SHORT TITLE AND COMMENCEMENT**

1. (1) This Act may be cited as the Motor Traffic (Breath Analysis) Act 1973 and shall come into force upon a date to be notified by the Minister in the Gazette.
- (2) The Motor Traffic Act 1937–1972 is in this Act referred to as the principal Act.
- (3) The principal Act as amended by this Act may be cited as the Motor Traffic Act 1937–1972.

### **AMENDMENT TO SECTION 7 OF THE PRINCIPAL ACT**

2. Section 7 of the principal Act is amended by adding the words and punctuation "Subject to sections 21L and 27," at the start of the section before the words "the Registrar".

### **AMENDMENT TO SECTION 9 OF THE PRINCIPAL ACT**

3. Section 9 of the principal Act is amended by deleting therefrom sub-paragraph (i) of paragraph (b).

### **NEW SECTIONS ADDED TO THE PRINCIPAL ACT**

4. The following new sections 21A to 21Q are added to the principal Act immediately after section 21 thereof:

#### **"DRIVING WHILE ABILITY TO DRIVE IMPAIRED BY INTOXICATING LIQUOR**

21A. (1) Any person who is in charge of or who drives a motor vehicle while the percentage of alcohol in his blood exceeds the prescribed limit shall be guilty of an offence.

(2) Any person guilty of an offence against subsection (1) may be arrested without a warrant by any police officer.

#### **PRELIMINARY BREATH TEST**

21B. (1) A police officer may, if he has reasonable grounds based upon his personal observations for believing that any person –

- (a) whom he finds driving or in charge of a motor vehicle, or
- (b) whom he believes on reasonable grounds has within the preceding one hour driven, or been in charge of, a motor vehicle when it was involved in

a collision with any other motor vehicle or with any person, animal or object,  
has consumed intoxicating liquor and that the ability of such person to drive may have been impaired thereby, require such person to undergo a preliminary breath test by a prescribed device operated by such police officer or any other police officer to ascertain speedily without disclosing the actual level of concentration whether it is likely that the percentage of alcohol in that person's blood exceeds the prescribed limit.

(2) Where upon any person undergoing a preliminary breath test under subsection (1) it is ascertained that it is likely that the percentage of alcohol in that person's blood is greater than the prescribed limit, a police officer may detain that person for such time, not exceeding one hour, as is necessary to enable him to be required to furnish a sample of breath for analysis by a breath-analysing instrument under section 21C, and may require that person to accompany him to a police station for that purpose.

#### **SUBMISSION TO BREATH-ANALYSIS TEST IN CERTAIN CASES**

21C. (1) Any police officer may require any person —

(a) whom he finds driving a motor vehicle or in charge of a motor vehicle and who behaves in a manner which indicates that his ability to drive a motor vehicle is impaired, or

(b) who has undergone a preliminary breath test under section 21B by which it has been ascertained that it is likely that the percentage of alcohol in his blood exceeds the prescribed limit,

to furnish a sample of breath for analysis by a breath-analysing instrument.

(2) The provisions of the last preceding subsection extend to any case where the police officer believes on reasonable grounds that any such person was driving or in charge of a motor vehicle at any time within the preceding two hours before the requirement is made and that such person behaved in a manner which indicated that his ability to drive a motor vehicle at such a time was impaired.

#### **FURNISHING OF BREATH SAMPLE**

21D. (1) Any person lawfully required by a police officer under the provisions of section 21B or section 21C to undergo a preliminary breath test or to furnish a sample of his breath shall do so by exhaling into the device or instrument, as the case may be, through the tube connected thereto and shall exhale continuously to the reasonable satisfaction of the person operating the device or instrument.

(2) No person shall be obliged to undergo a preliminary breath test under section 21B more than one hour after driving or being in charge of the motor vehicle.

(3) No person shall be obliged to furnish a sample of his breath under section 21C more than two hours after driving or being in charge of the motor vehicle.

(4) No person shall be obliged to undergo a preliminary breath test under section 21B or to furnish a sample of his breath under section 21C except —

(a) at or in the vicinity of the place where the driving or being in charge of the motor vehicle occurred;

(b) if such person has left that place with the apparent intention of avoiding such test or of concealing his identity, at or in the vicinity of the place where he is found;

(c) at a police station or within the grounds or precincts thereof; or

(d) if such person has been taken from the place where such driving or being in charge occurred for medical treatment, at the place where he is receiving medical treatment.

(5) Where a person required to undergo a preliminary breath test under section 21B or to furnish a sample of his breath under section 21C is receiving medical treatment and the medical practitioner in immediate charge of the treatment of that person objects to his undergoing the breath test or furnishing a sample of his breath on the grounds that it would be prejudicial to the proper care or treatment of that person so to do the medical practitioner may, in the presence of the member

of the police force requiring the sample of breath, take a sample of that person's blood for analysis and deliver a part of that sample to such member and no action shall lie against such medical practitioner for taking the sample without the express consent of such person nor shall any action lie against such person for refusing or failing to undergo such a test or to furnish such a sample.

#### **REFUSAL TO FURNISH A SAMPLE**

21E. (1) Any person who, when required by a police officer pursuant to the provisions of subsection (1) of section 21B or of subsection (1) of section 21C to undergo a breath test or to furnish a sample of his breath for analysis, refuses or fails to do so shall, subject to subsection (5) of section 21D, be guilty of an offence and may be arrested without warrant by the police officer making the requirement, or by any other police officer at the request of such officer.

(2) A person shall not be convicted of refusing or failing to undergo a breath test or to furnish a sample of his breath for analysis pursuant to subsection (1) of section 21C if he satisfies the Court that there was some reason of a substantial character for his refusal or failure other than a desire to avoid providing evidence which might be used against him.

#### **CERTIFICATE OF BREATH ANALYSIS**

21F. (1) As soon as practicable after a sample of a person's breath is analysed by means of a breath-analysing instrument the person operating the instrument shall sign and deliver to the person whose breath has been analysed a certificate in or to the effect of the Fourth Schedule to this Act stating the percentage of alcohol indicated by the analysis to be present in his blood, which may be by way of an indication on a scale, and of the date and time at which the analysis was made.

(2) A document purporting to be a copy of any certificate given in accordance with the provisions of the preceding subsection and purporting to be signed by a police officer authorised by the Director of Police to operate breath-analysing instruments shall be prima facie evidence in any proceedings referred to in section 21G of the facts and matters stated therein unless the accused person gives notice in writing to the informant a reasonable time in the circumstances before the hearing that he requires the officer giving the certificate to be called as a witness.

(3) A certificate purporting to be signed by the Director of Police that a police officer named therein is authorised by the said Director to operate breath-analysing instruments shall be admissible in any proceedings referred to in section 21G as evidence of the authority of that person.

#### **EVIDENCE OF INTOXICATION**

21G Where the question whether any person was or was not under the influence of intoxicating liquor or where the question as to the proportion of alcohol in the blood of any person at the time of an alleged offence is relevant upon any trial or hearing -

- (a) for manslaughter or for negligently causing grievous bodily harm arising out of the driving of a motor vehicle,
- (b) for an offence against section 328 of the Criminal Code of Queensland in its application to Nauru arising out of the driving of a motor vehicle, or
- (c) for an offence against section 19, section 21 or section 21A of this Act,

then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the percentage of alcohol indicated to be present in the blood of that person by a breath-analysing instrument operated by a police officer authorised in that behalf by the Director of Police and the percentage of alcohol so indicated shall, subject to compliance with the provisions of section 21H, be conclusive evidence that such was the percentage of alcohol present in the blood of that person at the time his breath was analysed by the instrument.

**OPERATOR'S EVIDENCE**

21H. In any proceedings such as are referred to in section 21G evidence by a police officer authorised to operate a breath-analysing instrument pursuant to this Act –

- (i) that apparatus used by him on any occasion pursuant to this Act was a breath-analysing instrument within the meaning of this Act;
- (ii) that the breath-analysing instrument was on that occasion in proper working order and properly operated by him; and
- (iii) that in relation to the breath-analysing instrument all regulations made under this Act with respect to breath-analysing instruments were complied with,

shall be prima facie proof of those facts.

**PRESUMPTION AS TO ALCOHOL LEVEL IN BLOOD**

21J. For the purposes of this Act, if it is established that at any time within two hours after an alleged offence a certain percentage of alcohol was present in the blood of the person charged with the offence, it shall be presumed until the contrary is proved beyond reasonable doubt that no less than that percentage of alcohol was present in the person's blood at the time at which the offence is alleged to have been committed.

**CONSUMING ALCOHOL AFTER ACCIDENT OR PRELIMINARY BREATH TEST**

21K. Any person who –

- (a) where a motor vehicle which has been involved in a collision with any other motor vehicle or with any person, animal or object, was driven by him at the time of such collision; or
- (b) having undergone a preliminary breath test under section 21B by which it has been ascertained that it is likely that the percentage of alcohol in his blood is greater than the prescribed limit,

consumes intoxicating liquor within two hours after such collision or test is guilty of an offence:

Provided that it shall not be an offence for any person to consume alcohol within such period if he has during such period and prior to consuming that alcohol either undergone a preliminary breath test under section 21B which has shown that it is not likely that the proportion of alcohol in his blood exceeds the prescribed limit or has furnished a sample of his breath under section 21C and it has been ascertained thereby that the percentage of alcohol in his blood does not exceed the prescribed limit.

**PENALTIES**

21L. (1) Any person who is convicted of an offence under subsection (1) of section 21A, subsection (1) of section 21E or section 21K is liable, if not previously convicted of an offence under any of those sections or under section 21, to a fine of one hundred dollars and, if previously convicted of one or more offences under any one or more of those sections or section 21, to imprisonment for one month and to a fine of two hundred dollars.

(2) In addition to imposing a fine or a sentence of imprisonment a Court which has convicted a person of an offence against section 21, subsection (1) of section 21A, subsection (1) of section 21E or section 21K shall, notwithstanding anything to the contrary in this Act or in any other Act, cancel the licence of such person and

- (a) if he has not previously been convicted of an offence under any of those sections, disqualify him for not less than six months for obtaining a licence; and
- (b) if he has previously been convicted of an offence under any of those sections, disqualify him for not less than twelve months for obtaining a licence.

**MEANING OF "PRESCRIBED DEVICE" AND "BREATH ANALYSING INSTRUMENT"**

21M. (1) In this Act "a prescribed device" means a device prescribed for the purpose of section 21B by the Cabinet by notice published in the Gazette.

(2) In this Act "breath-analysing instrument" means apparatus of a type approved for the purpose of section 21C by the Cabinet by notice published in the Gazette as apparatus for ascertaining by analysis of a person's breath what percentage of alcohol is present in his blood.

**MEANING OF "PERCENTAGE OF ALCOHOL PRESENT IN BLOOD" AND OF "THE PRESCRIBED LIMIT"**

21N. (1) For the purpose of this Act, in order to determine the percentage of alcohol present in a person's blood 10 milligrammes of alcohol in 100 millilitres of blood shall be taken as being a percentage of 0.01 per cent of alcohol present in the blood.

(2) In sections 21A, 21B and 21K "the prescribed limit" means a percentage of 0.05 per cent of alcohol present in the blood, that is to say 50 milligrammes of alcohol in 100 millilitres of blood.

**REVOCATION OF APPROVALS, ETC.**

21P. Any approval or authority given pursuant to this Act by the Cabinet or by the Director of Police may be revoked by the Cabinet or the Director of Police respectively at any time in the manner in which it was given and upon such revocation shall cease to have any effect thereafter.

**REGULATIONS**

21Q. The Cabinet may make regulations for or with respect to —

- (a) the maintenance and use of prescribed devices and breath-analysing instruments used for the purposes of this Act and the methods to be employed for ensuring that such prescribed devices and breath-analysing instruments give accurate results; and
- (b) the methods and conditions to be observed in collecting and delivering blood samples and in determining the percentage of alcohol therein.

**NEW SCHEDULE ADDED TO THE PRINCIPAL ACT**

5. The following new Schedule is added to the principal Act as the Fourth Schedule thereto:

**FOURTH SCHEDULE**

**REPUBLIC OF NAURU**

**THE MOTOR TRAFFIC ACT 1937-1973  
(Section 21F)**

**CERTIFICATE OF AUTHORISED OPERATOR OF BREATH-ANALYSING INSTRUMENT**

I, \_\_\_\_\_ of \_\_\_\_\_, a police officer, hereby

certify:-

(1) that I am a person authorised by the Director of Police to operate a breath-analysing instrument;

(2) that on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_ I did analyse a sample of the breath of \_\_\_\_\_ of \_\_\_\_\_ by means of a breath-analysing instrument;

(3) that the breath-analysing instrument I used in the course of such analysis was on that day –

(a) of a type approved by the Cabinet by notice published in the Gazette;

(b) an instrument in relation to which all regulations made under the Act with respect to breath-analysing instruments were complied with; and

(c) in proper working order and properly operated by me in accordance with the Regulations; and

(4) that the said instrument indicated that the percentage of alcohol present in the blood of the said \_\_\_\_\_ at the time and place referred to was \_\_\_\_\_ per cent.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .

AUTHORISED OPERATOR

This certificate was delivered by me to the said \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_

Authorised Operator''

#### REPEAL AND SAVING

6. Subsection(3)of section 21 of the principal Act is repealed :

Provided that, where at the commencement of this Act the licence of any person to drive a motor vehicle has been suspended or cancelled under the said subsection (3), such suspension or cancellation, if still in effect at the time of such commencement, shall continue to have effect for such period as that for which it would have had effect if the said subsection had not been repealed.