

A BILL

ENTITLED

AN ACT to Amend the Road Traffic Act.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Road Traffic (Amendment) Act, 1995, and shall be read and construed as one with the Road Traffic Act (hereinafter referred to as the principal Act) and all amendments thereto and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title,  
construction  
and com-  
mencement.

Insertion of  
new sections  
34A to 34G  
in principal  
Act.

2. The principal Act is amended by inserting next after section 34 the following as sections 34A to 34G—

“Driving  
or being  
in charge  
of vehicle  
while blood-  
alcohol levels  
exceed  
prescribed  
limit.

34A.—(1) A person shall not 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) shall be guilty of an offence and shall be liable —

(a) in the case of a first conviction, to a fine not exceeding three thousand dollars or in default of payment thereof to imprisonment for a term not exceeding six months; and

(b) in the case of a second or subsequent conviction, to a fine not exceeding five thousand dollars or in default of payment thereof, to imprisonment for a term not exceeding twelve months.

(3) No person shall be convicted under this section of being in charge of a motor vehicle as mentioned in 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 so long as there was any probability of his having alcohol in his breath or blood in a proportion exceeding the prescribed limit.

Breath  
test.

34B.—(1) Where a constable in uniform or on showing his authority as a member of

the Constabulary Force 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 an alcohol level in his breath exceeding the prescribed limit or is in breach of section 34; or
- (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 an alcohol level in his breath exceeding the prescribed limit and that the person still has alcohol in his breath; 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,

he may, subject to subsection (4), require him to provide a specimen of breath for a breath test.

(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) If an accident occurs owing to the presence of a motor vehicle on a road, a constable in uniform or on showing his authority as a member of the Constabulary Force may, subject to subsection (4), require

any person whom he has reasonable cause to believe was driving or attempting to drive (hereinafter in this section referred to as the driver) 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) If a driver 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 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 the patient.

(5) A driver who, without reasonable excuse, fails to provide a specimen of breath under subsection (1), (3) or (4) is guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand dollars or, in default of payment, to imprisonment for a term not exceeding 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) If a person required by a constable under subsection (1) or (3) 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 34 (3), arrest the person without warrant but no such arrest may be made if the person is at a hospital as a patient.

(8) A person arrested under this section or under section 34 (3) shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test at the police station.

Breath  
analysis.

34c.—(1) Subject to subsections (2) and (3) where—

- (a) any person required by a constable under section 34B to undergo a breath test fails to undergo that test; or
- (b) in consequence of a breath test carried out under section 34B, 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.

(2) The breath analysis referred to in subsection (1) shall be carried out at a

police station by a member of the Constabulary Force authorized in that behalf by the Minister.

(3) A member of the Constabulary Force shall not require any person to undergo a breath test or to submit to a breath analysis —

- (a) if that 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 that member that it would, by reason of injuries sustained by that 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.

Provided that a person may be required to submit to a breath test at that person's usual place of abode—

- (a) if the member 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 re-

sulting 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) it was not feasible for a constable to require the person to submit to a breath test at the scene of the accident.

(4) 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 Constabulary Force; 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 34B (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,

shall be guilty of an offence and shall be liable —

(c) in the case of a first conviction, to a fine not exceeding three thousand dollars or in default of payment thereof to imprisonment for a term not exceeding six months; and

- (d) in the case of a second or subsequent conviction, to a fine not exceeding five thousand dollars or in default of payment thereof to imprisonment for a term not exceeding twelve months.

(5) It shall be a defence to a prosecution for an offence under subsection (4) (a) if the defendant 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.

(6) As soon as practicable after a person has submitted to a breath analysis, the member of the Constabulary Force operating the breath analysing instrument shall deliver to that person a statement in writing signed by that member 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 100 millilitres of breath; and
- (b) the time of day and the day on which the breath analysis was completed.

(7) In proceedings for an offence under section 34, 34A or 34B —

- (a) evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analysing instrument operated by the member of the Constabulary Force authorized in



that behalf under section 34c (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 34B (1) (a) unless the accused proves that the concentration of alcohol in his breath at that time did not exceed the prescribed limit.

(8) In proceedings for an offence under section 34B, a certificate purporting to be signed by a member of the Constabulary Force certifying that—

- (a) he is authorized by the Minister to operate breath analysing 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 analysing instrument approved by the Minister;
- (d) the analysis was made on the day and completed at the time stated in the certificate;
- (e) a concentration of alcohol determined by that breath analysing instrument and expressed in microgrammes of alcohol in 100 millilitres of breath was present in the breath of that person on the day and at the time stated in the certificate; and

- (f) a statement in writing required by subsection (6) was delivered in accordance with that subsection;

shall be *prima facie* evidence of the particulars certified in and by the certificate.

(9) In proceedings for an offence under this section a certificate purporting to be signed by the Minister that the member of the Constabulary Force named therein is authorized by the Minister to operate breath analysing instruments shall be *prima facie* evidence of the particulars certified in and by the certificate.

(10) In any proceedings for an offence under this section, evidence of the condition of a breath analysing 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.

Laboratory tests.

34D.—(1) Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under section 34 or 34A a constable may require a person under investigation to provide a sample of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a sample 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 re-

quirement 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 if a breath analysis has been carried out in respect of that person and the result is available.

(4) Nothing in the foregoing provisions of this section shall affect the provisions of section 34F.

(5) For the purposes of this section and sections 34A, 34B and 34F, 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.

Refusal to consent to taking of or providing of specimen.

34E.—(1) Where any person who is under investigation in relation to an offence under section 34 refuses to provide a sample of blood for a blood test when required to do so under section 34D (1), his refusal may, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence, with respect to his condition at the time when the offence was committed.

(2) For the purposes of subsection (1), a person shall not be treated as failing to

provide a specimen unless he is first requested to provide a specimen but refuses to do so.

Ancillary provisions as to evidence in proceedings for an offence under section 34A or 34B.

34F.—(1) For the purposes of any proceedings for an offence under section 34A, 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 34A, 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 his counsel 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 34A the accused, at the time a specimen of blood was taken from or provided by him, 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.

Interpreta-  
tion of  
sections  
34A to 34F.

34G.—(1) In sections 34A to 34F, except so far as the context otherwise requires—

“authorized analyst” means a person designated as such by the Minister responsible for health by order published in the *Gazette*;

“breath analysis” means the quantitative measuring of the proportion of alcohol in a person’s breath, carried out by means of a device approved for the purpose by the Minister;

“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 of a type approved for the purpose of such a

test by the Minister, on a specimen of breath provided by such person;

“constable” means a member of the Jamaica Constabulary Force or the Island Special Constabulary Force;

“Constabulary Force” means the Jamaica Constabulary Force or the Island Special Constabulary Force;

“fail”, in relation to providing a specimen, includes refuse;

“hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients and includes any place recognized by the Minister responsible for health 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, 35 microgrammes of alcohol in 100 millilitres of breath; and
- (b) blood alcohol concentration, 80 milligrammes of alcohol in 100 millilitres of blood,

or such other proportion as may be prescribed.

(2) References in section 34B 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.

3. Section 59 of the principal Act is amended —

Amend-  
ment of  
section 59  
of princi-  
pal Act.

- (a) by numbering the section as subsection (1) of section 59; and
- (b) by inserting next after subsection (1) the following as subsection (2) —

(2) Where, pursuant to subsection (1), regulations are made with respect to sections 34A to 34D, those regulations shall be subject to affirmative resolution.

4. The Second Schedule to the principal Act is amended by inserting next after the reference to section 34 in column 1 and the respective description of offence and demerit points therefor, the following —

Amend-  
ment of  
Second  
Schedule to  
principal  
Act.

“Section 34A	Driving under the in- fluence of alcohol	14
Section 34B	Failure to supply specimen of breath when so required by a constable	14
Section 34C	Failure to submit to breath analysis or wilful alteration of alcohol concen- tration in breath or blood	14

Passed in the House of Representatives this 6th day of December, 1994.

CARL MARSHALL,  
*Speaker.*

Passed in the Senate this 17th day of February, 1995 with Fourteen (14) Amendments.

W. V. JONES,  
*President.*