

## TRANSPORT AMENDMENT (NO. 3) BILL

### EXPLANATORY NOTE

This Bill amends the Transport Act 1962.

*Clause 1* relates to the Short Title and commencement.

Except as mentioned below, the Act is to come into force on the day on which it receives the Governor-General's assent.

*Clause 2* amends section 29 of the principal Act, which empowers the making of regulations relating to motor drivers licences. The clause empowers the making of regulations providing that all certificates of approval issued to driving instructors (whether issued before or after the making of the regulations) shall continue in force for a specified period of time only; and providing that licences to drive passenger service vehicles shall not be issued unless the issuer is satisfied that the applicant is a suitable person to hold such a licence and that such licences may be revoked in certain circumstances. The clause also validates certain existing regulations relating to licences to drive passenger service vehicles.

*Clause 3* amends section 30 of the principal Act (which prescribes penalties for offences against the principal Act) by increasing certain of those penalties. In particular,—

- (a) The maximum fine that may be imposed in respect of an offence relating to causing bodily injury or death through reckless or dangerous driving or driving while under the influence of drink or drugs is increased from \$2,000 to \$4,000;
- (b) The maximum fine that may be imposed in respect of an offence relating to causing bodily injury or death through careless use of a motor vehicle is increased from \$1,000 to \$3,000;
- (c) The maximum fine that may be imposed in respect of a blood-alcohol offence is increased from \$400 to \$1,500;
- (d) The maximum fine that may be imposed in respect of an offence relating to the careless or inconsiderate use of a motor vehicle is increased from \$200 to \$1,000; and
- (e) The maximum fine that may be imposed in respect of an offence against the transport licensing provisions of the principal Act is increased from \$200 to \$2,000.

*Clause 4* amends section 32 of the principal Act, which provides that the Court may, on an application by a local authority, insurance company, the Commissioner of Police, or the Secretary for Transport, make an order disqualifying any person from holding a driver's licence. The effect of the amendment is to empower any commissioned officer of Police to make such an application.

*Clause 5* amends section 38 of the principal Act (which relates to the issue of limited licences to disqualified persons).

*Subclause (1)* amends section 38 (2)—

- (a) To provide that the Court may order the issue of a limited licence if it is satisfied that the disqualification has resulted or will result in extreme hardship to the applicant or undue hardship to a person other than the applicant. At present section 38 (2) provides that the Court may order the issue of a limited licence if it is satisfied that the disqualification has resulted or will result in undue hardship to any person;
- (b) To provide that no order may be made under this section in respect of a person who is disqualified from holding a driver's licence on his conviction for an offence of a specified type committed within 5 years (rather than 3 years, as at present) after the commission of any other such offence;
- (c) By adding to this subsection a proviso to the effect that where a person is disqualified from holding a driver's licence on his conviction for an offence of a specified type, no order shall be made that authorises the person to obtain a limited licence before the expiration of one month from the date of commencement of the disqualification order;—

and also adds a new subsection (2A) to the effect that, unless the Court decides in any particular case that compliance with this subsection is impracticable, no order to issue a limited licence may be made until every person who has made an affidavit filed in support of the application for the order has appeared before the Court for examination on the contents of his affidavit.

*Subclause (2)* amends section 38 (3) of the principal Act. The effect of the amendment is to empower the Court to specify, in any order authorising the issue of a limited licence, such matters as the Court thinks fit. This subclause is deemed to have come into force on 1 February 1971.

*Clause 6* makes a drafting amendment to section 41 of the principal Act (which relates to appeals against disqualification orders).

*Clause 7* repeals sections 58 to 58D of the principal Act (which relate to blood-alcohol offences), and substitutes proposed new sections 57A to 58F. The principal differences between the proposed new sections and the present sections are based on recommendations made by the Parliamentary Select Committee on Road Safety in its 1978 Interim Report (Parliamentary Paper I 17A) and are as follows:

- (a) The proposed new section 58 prescribes a new offence of driving a motor vehicle while the proportion of alcohol in the person's breath, as ascertained by an evidential breath test, exceeds 500 micrograms per litre of breath. The evidential breath test is undergone after an initial breath screening test and in place of the second breath test provided for in the present sections. The result of an evidential breath test may not be admitted in evidence in any proceedings if the person has requested a blood test;
- (b) The present blood-alcohol limit of 100 milligrams of alcohol per 100 millilitres of blood is lowered to 80 milligrams of alcohol per 100 millilitres of blood in the proposed new section 58;
- (c) The grounds upon which an enforcement officer may request a person to undergo a breath screening test have been widened in the proposed new sections. The new grounds are, first, good cause to

suspect that the person has been drinking before or while driving; secondly, that the person was the driver of a motor vehicle involved in an accident or, where it is not clear who the driver of such a motor vehicle was, the person was in the motor vehicle at the time of the accident; and thirdly, good cause to suspect that the person has recently committed an offence against the principal Act or regulations made thereunder that involves the use of a motor vehicle:

- (d) The proposed new sections provide that, where an evidential breath test has been taken, a blood test shall not be taken unless the person requests a blood test or the evidential breath test indicates a breath-alcohol level of between 300 and 500 micrograms of alcohol per litre of breath:
- (e) The proposed new section 58B provides that an enforcement officer may request a blood test if he has good cause to suspect that a person has driven a motor vehicle while under the influence of a drug or of drink and a drug, and he has arrested the person pursuant to section 62 of the principal Act, and a doctor has examined the person and believes that he may be under the influence of a drug or of drink and a drug:
- (f) The proposed new section 58D (which relates to hospital blood tests) provides that no person who is in a hospital as a result of an accident involving a motor vehicle shall be required to undergo a breath screening test or an evidential breath test, but also provides that a doctor may authorise (and shall authorise, if requested to do so by an enforcement officer) the taking of a blood specimen from such a person if he is satisfied that the taking of the specimen would not be prejudicial to the proper care or treatment of the person. The present section 58D differs from the above-mentioned proposed provisions in that it permits an enforcement officer to require a breath test from such a person in certain circumstances and imposes a duty on a Medical Superintendent to ensure that if practicable a blood specimen is taken from a driver of a motor vehicle who is in hospital as the result of an accident involving that vehicle. The proposed new section 58D also contains simplified procedures relating to the delivery of blood specimens for analysis.
- (g) The proposed new section 58F provides that blood specimens may be taken for statistical or research purposes from any person in an approved hospital as a result of a motor accident. The present section 58D (13) provides that a blood specimen may be taken for statistical purposes from any person who is over the age of 15 years and who is in any hospital as a result of an accident involving a motor vehicle of which he was the driver.

*Clause 8* makes amendments and repeals that are consequential upon clause 7 of the Bill.

Clauses 7 and 8 are to come into force on a date to be fixed by the Governor-General by Order in Council.

*Clause 9* makes a drafting amendment to section 111 of the principal Act, which relates to the carriage of goods by linked-up services.

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*Hon. Mr McLachlan*

### TRANSPORT AMENDMENT (NO. 3)

#### ANALYSIS

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#### A BILL INTITULED

#### An Act to amend the Transport Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,  
5 as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Transport Amendment Act (No. 3) 1978, and shall be read together with and deemed part of the Transport Act 1962\* (hereinafter referred to as the principal Act).

\*Reprinted 1974, Vol. 3, p. 2489

Amendments: 1975, Nos. 4, 106; 1976, Nos. 126, 152; 1977, Nos. 3, 27; 1978, Nos. 3, 25

(2) Section 5 (2) of this Act shall be deemed to have come into force on the 1st day of February 1971.

(3) Sections 7 and 8 of this Act shall come into force on a date to be fixed by the Governor-General, by Order in Council.

(4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the day on which it receives the Governor-General's assent.

**2. Regulations as to motor drivers' licences—**(1) Section 29 of the principal Act (as substituted by section 3 of the Transport Amendment Act 1971) is hereby amended by adding to paragraph (1) the words “; and providing that every such certificate (whether issued before or after the day the regulations are made) shall continue in force for a specified period of time only”.

(2) Section 29 of the principal Act (as so substituted) is hereby further amended by adding the following paragraph:

“(n) Providing that a licence to drive a taxicab, motor omnibus, trolley omnibus, or passenger-service vehicle shall not be issued unless the issuer is satisfied that the applicant is a person of good character and a suitable person to hold such a licence; empowering the Secretary or a local authority to revoke any such licence if it is satisfied that the holder is unfit to be the holder of such a licence; and providing for a right of appeal to a Magistrate (whose decision shall be final) against a refusal to issue, or a revocation of, any such licence, and prescribing the time and manner in which such appeals may be made.”

(3) All regulations made before the day this section comes into force that would have been valid if section 29 (n) of the principal Act (as added by subsection (2) of this section) had been in force when the regulations were made are hereby validated and declared to have been lawfully made.

**3. Penalties for offences**—(1) Section 30 of the principal Act (as substituted by section 2 of the Transport Amendment Act 1970 and amended by section 6 of the Transport Amendment Act 1974) is hereby further amended—

- 5 (a) By omitting from subsection (1) the words “not exceeding \$2,000”, and substituting the words “not exceeding \$4,000”:
- (b) By omitting from subsection (2A) the expression “\$1,000”, and substituting the expression “\$3,000”:
- 10 (c) By omitting from subsection (3) the expression “\$400”, and substituting the expression “\$1,500”.

(2) Section 30 of the principal Act (as so substituted) is hereby further amended by inserting, after subsection (3), the following subsections:

- 15 “(3A) Every person who commits an offence against section 60 of this Act (which relates to careless or inconsiderate use of a motor vehicle) is liable to a fine not exceeding \$1,000, and the Court may order him to be disqualified from holding or obtaining a driver’s licence for such period as the Court
- 20 thinks fit.

“(3B) Every person who commits an offence against Part VII of this Act or against any regulations made thereunder is liable to a fine not exceeding \$2,000.”

- 25 (3) Section 143 (3) of the principal Act (as amended by section 3 (1) of the Transport Amendment Act 1970) is hereby further amended by omitting the words “subsection (4) of”.

(4) Section 153 (2) of the principal Act is hereby repealed.

- 30 (5) Section 6 (1) of the Transport Amendment Act 1974 is hereby consequentially repealed.

**4. Disqualification from holding driver’s licence on application by certain persons**—Section 32 of the principal Act (as substituted by section 2 of the Transport Amendment Act 35 1970) is hereby amended by repealing paragraph (c) of subsection (1), and substituting the following paragraph:

- “(c) Any commissioned officer of Police, or a member of the Police authorised by the Commissioner of Police in that behalf, either generally or in any
- 40 particular case; or”.

**5. Issue of limited licence to disqualified person—**

(1) Section 38 of the principal Act (as substituted by section 2 of the Transport Amendment Act 1970 and amended by section 8 of the Transport Amendment Act 1974) is hereby further amended by repealing subsection (2), and substituting the following subsections: 5

“(2) Subject to the provisions of this section, on the making of the order of disqualification or at any time thereafter, the Court, on the application of the person in respect of whom the order was made, may, if it is satisfied 10 that the order of disqualification has resulted or will result in extreme hardship to the applicant (whether in relation to employment or otherwise) or undue hardship to a person other than the applicant (whether in relation to employment or otherwise), make an order under this section 15 authorising him to obtain, immediately or after the expiration of such period as the Court may specify, a driver’s licence (in this Part referred to as a limited licence) authorising him to drive to such extent (being the least extent that it is necessary to alleviate that hardship) as the Court specifies in 20 the order:

“Provided that—

“(a) No order may be made under this section in respect of a person who is disqualified by an order under this Part of this Act on his conviction (whether 25 before or after the commencement of this proviso)—

“(i) For an offence against section 35 (1) of this Act; or

“(ii) For an offence against this Act of any of 30 the kinds specified in subsection (1) or subsection (2A) or subsection (3) of section 30 of this Act committed within 5 years after the commission of any other offence specified in any of those subsections (whether or not both offences are of the 35 same kind):

“(b) Where a person is disqualified by an order under this Part of this Act on his conviction (whether before or after the commencement of this proviso) for an offence against this Act of any of the kinds specified in subsection (1) or subsection (2A) or subsection (3) of section 30 of this Act, no order shall 40

be made that authorises the person to obtain a limited licence before the expiration of one month from the date of commencement of the order of disqualification.

5 “(2A) Unless the Court decides in any particular case that compliance with this subsection is impracticable, no order may be made under this section until every person who has made an affidavit filed in support of the application for the order has appeared before the Court for examination on the  
10 contents of his affidavit.”

(2) Section 38 (3) of the principal Act (as substituted by section 2 of the Transport Amendment Act 1970) is hereby amended by omitting the words “undue hardship which was alleged and proved”, and substituting the words “hardship  
15 which was alleged and proved, and may specify in the order such other matters as the Court thinks fit”.

(3) Section 8 of the Transport Amendment Act 1974 is hereby consequentially repealed.

**6. Appeals against disqualification order**—Section 41 of the  
20 principal Act (as substituted by section 2 of the Transport Amendment Act 1970) is hereby amended by inserting in subsection (1), after the words “appeal against”, the words “conviction or”.

**7. New provisions relating to breath-alcohol and blood-  
25 alcohol offences**—The principal Act is hereby amended by repealing sections 58 and 58A to 58D, and substituting the following heading and sections:

*“Breath-alcohol and Blood-alcohol Offences*

30 “57A. **Interpretation**—(1) In this section and in sections 58 and 58A to 58F of this Act, unless the context otherwise requires,—

“‘Approved Hospital Board’ means a Hospital Board approved by the Minister, with the agreement of the Minister of Health, for the purposes of section 58F of  
35 this Act:

“‘Authorised person’ means a registered medical practitioner, or a nurse or other person employed by a Hospital Board and who in the normal course of his duties takes blood specimens:



- “‘Blood specimen’ means a specimen of venous blood taken in accordance with normal medical procedures:
- “‘Blood specimen collecting kit’ means a package having endorsed thereon or affixed thereto or included 5 therein a label indicating that it is a blood specimen collecting kit and that it has been supplied by or on behalf of the Department of Scientific and Industrial Research:
- “‘Blood test’ means the taking of a blood specimen for 10 analysis:
- “‘Breath screening device’ means a device of a kind approved for the purpose of breath screening tests by the Minister, by notice in the *Gazette*:
- “‘Breath screening test’ means a test carried out by means 15 of a breath screening device and in a manner prescribed in respect of that device by the Minister, by notice in the *Gazette*:
- “‘Doctor’s surgery’ means a registered medical practitioner’s surgery or any other place where a medical 20 examination or medical care or treatment is carried out or given:
- “‘Drink’ means alcoholic drink:
- “‘Enforcement officer’ means a traffic officer or a constable: 25
- “‘Evidential breath test’ means a test carried out by means of an evidential breath-testing device and in a manner prescribed in respect of that device by the Minister, by notice in the *Gazette*:
- “‘Evidential breath-testing device’ means a device of a 30 kind approved for the purpose of evidential breath tests by the Minister, by notice in the *Gazette*:
- “‘Government analyst’ means the Dominion Analyst or a Government Analyst; and includes any person who is employed in the Department of Scientific and 35 Industrial Research and who is authorised to act as a Government analyst by the Dominion Analyst or a Government Analyst, either generally or in any particular case:
- “‘Hospital’ has the same meaning as in section 2 of the 40 Hospitals Act 1957:
- “‘Hospital Board’ has the same meaning as in section 2 of the Hospitals Act 1957:
- “‘Positive evidential breath test’ means an evidential breath test that indicates that the proportion of 45 alcohol in the breath of the person who underwent

the test exceeds 500 micrograms of alcohol per litre of breath; and "positive", in relation to an evidential breath test, has a corresponding meaning:

5 "Private analyst" means a person qualified by academic or technical training in chemical or biochemical analysis; and includes any body corporate or organisation that employs such a person:

10 "Registered medical practitioner" means a person registered as a medical practitioner under the Medical Practitioners Act 1968; and includes a person conditionally registered as a medical practitioner under that Act.

15 "(2) Any notice given by the Minister for the purposes of this section or the corresponding provisions of any former enactment shall be deemed to be and always to have been a regulation for the purposes of the Regulations Act 1936 and the Acts Interpretation Act 1924.

20 "(3) Any approval of a Hospital Board by the Minister for the purposes of this section shall be given for such limited period of time as is specified by the Minister, and may be given on such other terms and conditions as the Minister thinks fit.

"58. **Driving with excessive breath-alcohol or blood-alcohol concentration or while under influence of drink or drugs**—(1) Every person commits an offence who—

25 "(a) Drives or attempts to drive a motor vehicle on any road while the proportion of alcohol in his breath, as ascertained by an evidential breath test subsequently undergone by him, exceeds 500 micrograms of alcohol per litre of breath; or

30 "(b) Drives or attempts to drive a motor vehicle on any road while the proportion of alcohol in his blood, as ascertained from an analysis of a blood specimen subsequently taken from him, exceeds 80 milligrams of alcohol per 100 millilitres of blood; or

35 "(c) Drives or attempts to drive a motor vehicle on any road while under the influence of drink or a drug, or both, to such an extent as to be incapable of having proper control of the vehicle.

40 "(2) For the purposes of proceedings for an offence against this Act arising out of the circumstances in respect of which an evidential breath test was undergone by the defendant, it

shall be conclusively presumed that the proportion of alcohol in the defendant's breath at the time of the alleged offence was the same as the proportion of alcohol in his breath indicated by the test.

"(3) For the purposes of proceedings for an offence against this Act arising out of the circumstances in respect of which a blood specimen was taken from the defendant pursuant to section 58B or section 58D of this Act, it shall be conclusively presumed that the proportion of alcohol in his blood at the time of the alleged offence was the same as the proportion of alcohol in the blood specimen taken from him.

"(4) Notwithstanding any other provision of any Act or rule of law, the result of a positive evidential breath test shall not be admissible in evidence in proceedings for an offence against this Act if—

"(a) The person who underwent the test is not advised by an enforcement officer, forthwith after the result of the test is ascertained, that the test was positive and that, if he does not request a blood test within 10 minutes, the test could of itself be sufficient evidence to lead to his conviction for an offence against this Act; or

"(b) The person who underwent the test—

"(i) Advises an enforcement officer, within 10 minutes of being advised of the matters specified in paragraph (a) of this subsection, that he wishes to undergo a blood test; and

"(ii) Complies with section 58B (1) of this Act.

"58A. **Breath tests**—(1) Where an enforcement officer has good cause to suspect that—

"(a) The driver of a motor vehicle on any road has recently, before driving the vehicle, or has, while driving the vehicle, consumed drink; or

"(b) Any person attempting to drive a motor vehicle on any road has recently, before attempting to drive the vehicle, or has, while attempting to drive the vehicle, consumed drink; or

“(c) Any person has recently committed an offence against this Part of this Act, or against any regulations made under this Part of this Act, that involves the use of a motor vehicle—

5 he may require that driver or person to undergo forthwith a breath screening test.

“(2) Where an accident has occurred involving any motor vehicle, an enforcement officer may require—

10 “(a) The driver of the motor vehicle at the time of the accident; or

“(b) Where he is unable to ascertain who the driver of the motor vehicle was at the time of the accident, any person whom he has good cause to suspect was in the motor vehicle at the time of the accident—

15 to undergo forthwith a breath screening test.

“(3) If—

20 “(a) It appears to an enforcement officer that a breath screening test undergone by a person pursuant to a requirement under this section indicates that the proportion of alcohol in the person’s breath exceeds 400 micrograms of alcohol per litre of breath; or

25 “(b) A person, having been required by an enforcement officer pursuant to this section to forthwith undergo a breath screening test, fails or refuses to do so; or

30 “(c) An enforcement officer could, pursuant to this section, require a person to undergo forthwith a breath screening test, but a breath screening device is not readily available or for any reason a breath screening test cannot then be carried out—

35 the enforcement officer may require the person to accompany him to any place where it is likely that the person can undergo an evidential breath test and a blood test. If it is not practicable for the person to undergo an evidential breath test or a blood test at that place, an enforcement officer may require the person to accompany him to any other place or places where it is likely that the person can undergo an

40 evidential breath test and a blood test.

“(4) Where any person—

“(a) Has, pursuant to a requirement under this section, accompanied an enforcement officer to any place; or

“(b) Has been arrested under any of paragraphs (a) to (c) of subsection (5) of this section and taken to or detained at any place where it is likely that he can undergo an evidential breath test and a blood test— 5

an enforcement officer may require him to undergo forthwith at that place an evidential breath test (whether or not he has already undergone a breath screening test).

“(5) Every person commits an offence who—

“(a) Having undergone a breath screening test pursuant to a requirement under this section, fails or refuses to remain at the place where he underwent the test until after the result of the test is ascertained; or 10

“(b) Fails or refuses to accompany an enforcement officer to any place, when required to do so pursuant to this section; or 15

“(c) Having accompanied an enforcement officer to any place pursuant to a requirement under this section, fails or refuses to remain at that place until he is required either to undergo an evidential breath test or to accompany an enforcement officer to another place pursuant to this section; or 20

“(d) Having undergone an evidential breath test pursuant to a requirement under this section, fails or refuses to remain at the place where he underwent the test until after the result of the test is ascertained,— 25

and an enforcement officer may arrest him without warrant. 30

“58B. Blood tests—(1) If—

“(a) A person, having been required by an enforcement officer pursuant to section 58A of this Act to undergo forthwith an evidential breath test, fails or refuses to do so; or 35

“(b) It appears to an enforcement officer that an evidential breath test undergone by a person pursuant to section 58A of this Act is not positive but does indicate that the proportion of alcohol in the person’s breath exceeds 300 micrograms of alcohol per litre of breath; or 40

5 “(c) It appears to an enforcement officer that an evidential breath test undergone by a person pursuant to section 58A of this Act is positive, and, within 10 minutes of being advised by an enforcement officer of the matters specified in section 58 (4) (a) of this Act, the person advises an enforcement officer that he wishes to undergo a blood test; or

10 “(d) An evidential breath-testing device is not readily available at the place to which a person has accompanied an enforcement officer pursuant to a requirement under section 58A of this Act or to which a person has been taken under arrest, as the case may be; or for any reason an evidential breath test cannot then be carried out at that place; or

15 “(e) An enforcement officer has good cause to suspect that a person has committed an offence against section 55 (2), section 58 (1) (c), or section 59 of this Act (being an offence committed while under the influence of a drug or of drink and a drug) and has arrested that person pursuant to section 62 of this Act; and a registered medical practitioner has examined the person and believes that the person may be under the influence of a drug or of drink and a drug, or the person has refused to be examined by a registered medical practitioner for the purposes of this paragraph—

20 an enforcement officer may require the person to permit a registered medical practitioner to take a blood specimen from him, and that person shall permit a registered medical practitioner to take a blood specimen from him forthwith after being requested to so permit by the registered medical practitioner.

25 “(2) Every blood specimen taken pursuant to this section shall forthwith be divided into 2 parts, or, if the specimen is insufficient to be divided into 2 parts, the person from whom the specimen was taken shall permit a registered medical practitioner to take a further blood specimen from him forthwith after being requested to so permit by the registered medical practitioner, and each part or specimen, as the case may be, shall be placed in a separate bottle which shall be sealed. Where a blood specimen is divided into 2 parts as aforesaid, each such part shall be deemed to be a blood specimen for the purposes of this Act.

“(3) Any preservative substance and any anti-coagulant substance may be added to any blood specimen taken pursuant to this section by placing them in the bottle, whether before or after the specimen is taken and placed in that bottle.

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“(4) In proceedings for an offence against this Act, it shall be presumed, until the contrary is proved, that where the bottle in which a part of a blood specimen or a blood specimen, as the case may be, was placed was received by the registered medical practitioner in a sealed blood specimen collecting kit, the bottle contained a substance and that substance was a preservative and an anti-coagulant. For the purposes of this section, a combination or mixture of 2 or more substances shall be deemed to be one substance.

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“(5) In any proceedings for an offence against this Act,—

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“(a) A certificate purporting to be signed by a registered medical practitioner and certifying that—

“(i) A specimen of venous blood was taken by him in accordance with normal medical procedures from a person named in the certificate; and

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“(ii) The specimen was divided by him into 2 parts, or that the specimen was insufficient for division and a further specimen was taken by him; and

“(iii) He placed and sealed in a separate bottle

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“(iv) Each such separate bottle was received by him in a sealed blood specimen collecting kit; and

“(v) He handed each such separate bottle to an enforcement officer named in the certificate,—

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shall be sufficient evidence, until the contrary is proved, of such of those matters as are so certified and of the qualification of the person by whom the specimen of blood was taken:

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“(b) Where the certificate names a person having the same name, address, and occupation as the defendant as the person from whom the specimen of blood was taken, it shall be presumed, until the contrary is proved, that the specimen was taken from the defendant:

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“Provided that a certificate given under this subsection shall not be admissible in evidence if the Court, on application made by the defendant not less than 14 days before the hearing, orders that the registered medical practitioner ought  
5. to appear as a witness at the hearing.

“(6) An enforcement officer shall, within 7 days after the date on which they were taken pursuant to this section, deliver or cause to be delivered personally or post or cause to be posted by registered post, both parts of a blood specimen  
10 taken pursuant to this section or both those specimens, as the case may be, to the Dominion Analyst (or to a person employed in the Department of Scientific and Industrial Research, on his behalf) for the analysis of one of those parts or one of those specimens, as the case may be, and the custody  
15 of the other.

“(7) Where under subsection (6) of this section both parts of a blood specimen or both blood specimens (as the case may be) taken from any person are sent to the Dominion Analyst (or to a person employed in the Department of Scientific and  
20 Industrial Research, on his behalf) the Dominion Analyst shall send one of those parts or specimens to a private analyst specified by that person or by his solicitor or counsel if application therefor is made in accordance with this subsection by that person or by his solicitor or counsel not later than 14 days  
25 after—

“(a) The date on which a summons in respect of an offence against this Act (being an offence arising out of the circumstances in respect of which the blood specimen was taken) is served on the defendant;  
30 or

“(b) Where the defendant is arrested pursuant to a warrant under section 19 or, as the case may be, section 147 of the Summary Proceedings Act 1957 in respect of any such offence, the date on which the defendant is so arrested; or  
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“(c) In any case to which paragraph (a) or paragraph (b) of this section does not apply, the date on which the defendant is first charged in Court with any such offence.

40 Every such application shall be made in writing to the Dominion Analyst and shall state the full name and address, and occupation, of the person and the date of the alleged offence.



“(8) Notwithstanding anything in subsection (9) of this section, where application is made in accordance with subsection (7) of this section for one part of a blood specimen or, as the case may be, one blood specimen to be sent to a private analyst, and the part or specimen is not sent to that analyst in compliance with that application, any certificate given under subsection (9) (a) of this section in relation to the other part of the blood specimen or, as the case may be, the other blood specimen shall not be admissible in evidence in any proceedings for an offence against this Act. 5 10

“(9) For the purposes of any proceedings for an offence against this Act,—

“(a) A certificate purporting to be signed by a Government analyst and certifying that—

“(i) A blood specimen in a sealed bottle was delivered on a specified date to the Dominion Analyst (or to a person employed in the Department of Scientific and Industrial Research, on his behalf) by registered post, or by personal delivery by a named person, as the case may be, for analysis; and 15 20

“(ii) Upon analysis of the blood specimen by an analyst specified in the certificate, a specified proportion of alcohol or of a drug, or both, as the case may be, was found in the specimen; and 25

“(iii) No such deterioration or congealing was found as would prevent a proper analysis,— shall be sufficient evidence, until the contrary is proved, of the matters so certified and of the qualification and authority of the person by whom the analysis was carried out: 30

“(b) Where a certificate given under paragraph (a) of this subsection refers to the blood specimen analysed as being a specimen that had been taken from a person having the same name, address, and occupation as the defendant, it shall be presumed, until the contrary is proved, that the blood specimen was taken from the defendant: 35

“(c) Where under subsection (7) of this section an application is made for one part of a blood specimen or, as the case may be, one blood specimen to be sent to a specified private analyst, a certificate purporting to be signed by a Government analyst to the effect that such a part or specimen was posted to that analyst by registered post addressed to him at the address given by the person making 40 45

the application shall be sufficient evidence, until the contrary is proved, that the part or specimen was sent to that analyst in compliance with the application:

5 “(d) Every Government analyst signing any such certificate shall, until the contrary is proved, be presumed to be duly authorised to sign it:

“Provided that a certificate given under this subsection shall not be admissible in evidence if the Court, on application  
10 made by the defendant not less than 14 days before the hearing, orders that the person who made the analysis or posted the part or specimen or the Government analyst who gave the certificate, as the case may be, ought to appear as a witness at the hearing.

15 “(10) Upon the request of any person from whom a blood specimen has been taken pursuant to this section or of his solicitor or counsel, copies of any certificates given under subsections (5) and (9) of this section in respect of that blood shall be supplied to him by the prosecutor.

20 “(11) Any blood specimen sent to the Dominion Analyst (or to a person employed in the Department of Scientific and Industrial Research, on his behalf) pursuant to subsection (6) of this section may be destroyed at any time later than one year after the date the specimen was so sent.

25 “(12) Any blood specimen may be taken pursuant to this section in any hospital by any authorised person. In any such case, the provisions of this section and of section 58c (1) of this Act shall apply as if the references in those provisions to a registered medical practitioner were references to an  
30 authorised person.

“58c. Refusal to supply blood specimen—(1) Every person commits an offence and may be arrested, without warrant, by an enforcement officer, who—

35 “(a) Having been required by an enforcement officer, under section 58B (1) of this Act, to permit a blood specimen to be taken, fails or refuses to do so; or

“(b) Having been requested by a registered medical practitioner, under subsection (1) or subsection (2) of section 58B of this Act, to permit a blood specimen to be taken, refuses to do so or fails to do so  
40 forthwith after being so requested.

“(2) Every person commits an offence who, being a person from whom an authorised person may take a blood specimen pursuant to section 58D (2) of this Act, refuses or fails to  
45 permit such a person to take a blood specimen from him.

“(3) It shall be a defence in proceedings for an offence against subsection (1) or subsection (2) of this section if the Court is satisfied, on the evidence of a registered medical practitioner, that the taking of a blood specimen from the defendant would have been prejudicial to his health. 5

“(4) In any proceedings for an offence against this Act, if it is proved that the defendant,—

“(a) When required by an enforcement officer to permit a blood specimen to be taken, failed or refused, without reasonable cause, to do so; or 10

“(b) Being a person from whom an authorised person may take a blood specimen pursuant to section 58D (2) of this Act, failed or refused, without reasonable cause, to permit such a person to do so—

his refusal may be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defendant, with respect to the condition of the defendant at the time of the alleged offence. 15

“58D. Hospital blood tests—(1) Notwithstanding anything in any Act or rule of law, no enforcement officer shall require 20 any person who is in a hospital or doctor’s surgery as a result of an accident involving a motor vehicle to undergo a breath screening test or an evidential breath test.

“(2) Notwithstanding anything in any Act or rule of law, a registered medical practitioner who is in immediate charge 25 of the examination, care, or treatment of a person who is in a hospital or doctor’s surgery—

“(a) May take, or cause to be taken by another authorised person, a blood specimen from that person; and

“(b) Shall take, or cause to be taken by another authorised 30 person, a blood specimen from that person if requested to do so by an enforcement officer,—

whether or not that person has consented thereto and whether or not that person is capable of giving his consent:

“Provided that a blood specimen shall not be taken from a 35 person pursuant to this subsection unless the registered medical practitioner believes that the person is in the hospital or doctor’s surgery as a result of an accident involving a motor vehicle and the registered medical practitioner has examined the person and is satisfied that the taking of the 40 blood specimen from him would not be prejudicial to his proper care or treatment.

“(3) For the purposes of any proceedings for an offence against this Act, a certificate purporting to be signed by a registered medical practitioner and certifying that—

5 “(a) The person named in the certificate was in a hospital or doctor’s surgery; and

“ (b) He, being a registered medical practitioner in immediate charge of the examination, care, or treatment of that person, took a blood specimen or caused a blood specimen to be taken by an authorised person from that person pursuant to subsection (2) of this section; and

10 “(c) At the time the blood specimen was taken from that person, he believed that the person was in the hospital or doctor’s surgery as a result of an accident involving a motor vehicle; and

15 “(d) Before taking the blood specimen, or causing the blood specimen to be taken, from that person, he examined the person and was satisfied that the taking of the blood specimen from him would not be prejudicial to his proper care or treatment,— shall be sufficient evidence, until the contrary is proved, of such of those matters as are so certified and of the qualification of the person signing the certificate:

20 “Provided that a certificate given under this subsection shall not be admissible in evidence if the Court, on application made by the defendant not less than 14 days before the hearing, orders that the registered medical practitioner ought to appear as a witness at the hearing.

30 “(4) Every blood specimen taken from a person pursuant to this section shall forthwith be divided into 2 parts, or, if the specimen is insufficient to be divided into 2 parts, an authorised person may forthwith take a further blood specimen from the person, and each part or specimen, as the case may be, shall be placed in a separate bottle which shall be sealed. Where a blood specimen is divided into 2 parts as aforesaid, each such part shall be deemed to be a blood specimen for the purposes of this Act.

35 “(5) Subsections (3) to (11) of section 58B of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every blood specimen taken pursuant to this section, as if—

40 “(a) That specimen had been taken pursuant to the said section 58B; and

- “(b) The references to a registered medical practitioner in subsections (4) and (5) of the said section 58B were references to the person by whom the blood specimen was taken pursuant to this section; and
- “(c) Subparagraph (v) of subsection (5) of the said section 58B were omitted, and the following paragraph substituted: 5

“(v) He sent or caused to be sent by registered post or by personal delivery by a named person, as the case may be, on a specified date, both parts of the specimen or both specimens, as the case may be, to the Dominion Analyst (or to a person employed in the Department of Scientific and Industrial Research, on his behalf), in accordance with subsection (6) of this section,—; and 10 15

- “(d) The references in subsection (6) of the said section 58B to an enforcement officer were references to the person by whom the blood specimen was taken pursuant to this section.

“(6) Upon the request of any person from whom a blood specimen has been taken pursuant to this section or of his solicitor or counsel, a copy of the certificate given under subsection (3) of this section in respect of that blood shall be supplied to him by the prosecutor. 20

“(7) Notwithstanding anything in any Act or rule of law, no proceeding, civil or criminal, shall be taken against a Hospital Board or against any person in respect of the taking of a blood specimen pursuant to this section, or in respect of the sending of any blood specimen to the Dominion Analyst or a person employed in the Department of Scientific and Industrial Research, on the ground that any person whose consent to the taking of the blood specimen would have been otherwise required by law if this section had not been enacted has not so consented: 30

“Provided that nothing in this subsection shall apply with respect to any proceeding on the ground of any negligent act or omission in the taking of any such specimen. 35

“58E. **Reasonable compliance**—It shall not be a defence to a charge under paragraph (a) or paragraph (b) of section 58 (1) of this Act or under subsection (1) or subsection (2) of section 58c of this Act that any of the provisions of sections 5 58A, 58B, and 58D of this Act, as the case may be, have not been strictly complied with or have not been complied with at all, provided there has been reasonable compliance with such of those sections as apply.

10 “58F. **Taking of blood specimens for statistical or research purposes**—(1) Notwithstanding anything in any Act or rule of law, any authorised person employed by an approved Hospital Board may, with the general or special approval of the Hospital Board, take for statistical or research purposes, 15 a blood specimen from any person whom he believes is in the hospital at which he is employed for examination, care, or treatment as a result of an accident involving a motor vehicle.

20 “(2) A blood specimen taken pursuant to this section shall be labelled that it was taken for statistical or research purposes, and evidence as to the proportion of alcohol or of a drug found in that specimen shall not be admissible in any civil or criminal proceedings in any Court or in any proceedings before any person acting judicially (as defined in section 2 of the Evidence Act 1908).

25 “(3) Section 58D (7) of this Act shall apply with respect to every blood specimen taken pursuant to this section as if every reference therein to section 58D of this Act were a reference to this section.”

30 **8. Amendments and repeals consequential upon section 7**—(1) Section 30 of the principal Act (as substituted by section 2 of the Transport Amendment Act 1970 and amended by section 5 of the Transport Amendment Act (No. 2) 1971 and section 17 (2) of the Transport Amendment Act 1974) is hereby further amended—

35 (a) By inserting in subsections (1) (a) and (3) (d), after the word “driver’s”, the words “breath or”:

(b) By repealing subsection (3) (ea).

40 (2) Section 55 of the principal Act (as amended by section 4 of the Transport Amendment Act 1970) is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Every person commits an offence who,—

“(a) While under the influence of drink or a drug, or both, to such an extent as to be incapable of having proper control of the vehicle; or

“(b) While the proportion of alcohol in his breath, as ascertained by an evidential breath test undergone by him pursuant to section 58A of this Act, exceeds 500 micrograms of alcohol per litre of breath; or

“(c) While the proportion of alcohol in his blood, as ascertained from an analysis of a blood specimen taken from him pursuant to section 58B or section 58D of this Act, exceeds 80 milligrams of alcohol per 100 millilitres of blood,—

is in charge of a motor vehicle and by an act or omission in relation thereto causes bodily injury to or the death of any person.”

(3) Section 55 of the principal Act (as so amended) is hereby further amended by repealing subsection (5), and substituting the following subsection:

“(5) It shall not be a defence to an indictment for an offence under subsection (2) of this section (being an offence committed while the proportion of alcohol in the breath or blood, as the case may be, of the defendant exceeded the amount specified in that subsection) that any of the provisions of sections 58A, 58B, and 58D of this Act, as the case may be, have not been strictly complied with or have not been complied with at all, provided there has been reasonable compliance with such of those sections as apply.”

(4) Section 59 (a) of the principal Act is hereby amended by inserting, after the word “drug”, the words “, or both,”.

(5) Section 62 of the principal Act (as amended by section 6 (1) (c) of the Transport Amendment Act 1970) is hereby further amended by omitting the words “paragraph (b) of subsection (1) of section 58”, and substituting the words “section 58 (1) (c)”.

(6) Section 63 of the principal Act is hereby amended by adding the following subsection:

“(3) In any proceedings against any person for an offence against this section arising out of circumstances in respect of which a breath screening test or an evidential breath test was undergone by that person pursuant to section 58A of this Act

or a blood specimen was taken from that person pursuant to section 58B or section 58D of this Act, it shall not be a defence that—

- 5 “(a) The breath screening test indicated that the proportion of alcohol in the person’s breath did not exceed 400 micrograms of alcohol per litre of breath; or
- “(b) The evidential breath test indicated that the proportion of alcohol in the person’s breath did not exceed 500 micrograms of alcohol per litre of breath; or
- 10 “(c) A certificate given under section 58B or section 58D of this Act in respect of that blood specimen certifies that the proportion of alcohol in that specimen did not exceed 80 milligrams of alcohol per 100 millilitres of blood.”

15 (7) The First Schedule to the Summary Proceedings Act 1957 (as amended by section 6 (2) of the Transport Amendment Act 1970) is hereby further amended by inserting in that part of the third column that relates to section 55 (2) of the principal Act, after the word “excessive”, the words “breath-alcohol or”.

(8) The following enactments are hereby consequentially repealed:

- 25 (a) Sections 4, 5, and 6 (1) (c) of the Transport Amendment Act 1970:
- (b) Sections 9 and 10 of the Transport Amendment Act 1971:
- (c) Sections 2, 3, and 5 of the Transport Amendment Act (No. 2) 1971:
- 30 (d) Sections 6 and 7 of the Transport Amendment Act 1972:
- (e) Sections 14 to 17 of the Transport Amendment Act 1974:
- (f) Section 2 of the Transport Amendment Act (No. 2) 35 1975.

**9. Carriage of goods by linked-up services**—Section 111 (1) (b) of the principal Act is hereby amended by omitting the words “section 109 of this Act or of”, and substituting the words “section 108 of this Act and section 109 of this Act or”.