

SAMOA

Arrangement of Provisions

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2009, No. 10**AN ACT to amend the Road Traffic Ordinance 1960.***[26th June 2009]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Road Traffic (Breathalyser) Amendment Act 2009 and shall be read with and form part of the Road Traffic Ordinance 1960 (the “Principal Act”).

(2) This Act comes into force on a date to be nominated by the Minister.

2. Interpretation – Section 2 of the Principal Act is amended by inserting the following definitions in the correct alphabetical order:

- “blood specimen” means a specimen of venous blood taken in accordance with normal medical procedures;
- “blood test” means the taking of a blood specimen for analysis;
- “breath screening device” means a device of a kind approved for the purpose of breath screening tests by the Minister;
- “breath screening test” means a test carried out by means of a breath screening device in accordance with this Act;
- “Commissioner” means Commissioner of Police and Prison Services;
- “enforcement officer” means:
- (a) a police officer in uniform; or
 - (b) an officer of the Land Transport Authority authorised to enforce provisions of the Road Traffic Ordinance 1960.
- “evidential breath test” means a test carried out by means of an evidential breath test device in accordance with this Act;
- “evidential breath test device” means a device of a kind approved for the purpose of conclusive evidential breath tests in accordance with this Act;
- “medical officer” means:
- (a) a person acting in a hospital and who, in the normal course of the person’s duties, takes blood specimens; or
 - (b) a nurse; or
 - (c) a medical laboratory technician.
- “medical practitioner” has the same meaning as in section 2 of the Medical Practitioners Act 2007;
- “Minister” means Minister responsible for Transport;
- “passive breath testing device” means a passive breath testing device of a kind approved by the Minister responsible for Transport;
- “public place” has the same meaning as in section 2 of the Police Offences Ordinance 1961.

3. Driving when drunk or drugged – Section 40 of the Principal Act is amended by deleting the section in its entirety and substituting with the following:

“40. Contravention of specified breath alcohol and blood alcohol limits and drugs-(1) A person commits an offence if the person drives or attempts to drive a motor vehicle while the proportion of alcohol in the person’s breath, as ascertained by an evidential breath test subsequently undergone by that person under section 40B exceeds 40 micrograms of alcohol per 100 millilitres of breath.

(2) A person commits an offence if the person drives or attempts to drive a motor vehicle while the proportion of alcohol in the person’s blood as ascertained by the analysis of a blood specimen subsequently taken from the person under section 40E or section 40F, exceeds 80 milligrams of alcohol per 100 millilitres of blood.

(3) A person commits an offence if the person drives or attempts to drive a motor vehicle while under the influence of a drug, to such an extent as to be incapable of having proper control of the vehicle.

(4) For the purposes of subsection (3), a “drug” means a narcotic prescribed under the Narcotics Act 1967 or any other substance that can impair driving ability.

(5) A person who is convicted of an offence against subsection (1), (2) or (3) of this section is liable to a fine not exceeding 50 penalty units, or imprisonment for a term not exceeding five (5) years imprisonment, or both.

(6) A person convicted of an offence under this section shall, unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a larger period of disqualification, be disqualified for a period of 12 months from holding or obtaining a driving licence.”.

4. Insertion of new provisions – The Principal Act is amended by inserting after section 40 the following:

“40A. Who must undergo a breath screening test-(1) An enforcement officer may require any of the following persons to undergo a breath screening test without delay:

- (a) a driver of, or a person attempting to drive, a motor vehicle on a road; or
- (b) a person whom the officer has good cause to suspect has recently committed an offence against this Act that involves the driving of a motor vehicle; or
- (c) if an accident has occurred involving a motor vehicle -
 - (i) the driver of the vehicle at the time of the accident; or
 - (ii) if the enforcement officer is unable to ascertain who the driver of the motor vehicle was at the time of the accident, a person whom the officer has good cause to suspect was in the motor vehicle at the time of the accident.

(2) An enforcement officer may not require a 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.

(3) A person who has undergone a breath screening test under this section must remain at the place where the person underwent the test until after the result of the test is ascertained, and an enforcement officer may arrest the person without warrant if the person refuses or fails to remain at that place.

(4) If an enforcement officer is entitled to require a person to undergo a breath screening test, the officer may also require that person to undergo a test using a passive breath testing device, which test is one where the officer holds a passive breath testing device near the person’s

mouth for the purpose of ascertaining whether or not there is any alcohol in the person's breath.

(5) The use or non-use of a passive breath testing device does not of itself affect the validity of a breath screening test.

40B. Who must undergo an evidential breath test-(1) An enforcement officer may require a person to accompany an enforcement officer to a place where it is likely that the person can undergo an evidential breath test or a blood test (or both) when required to do so by the officer, if:

- (a) the person has undergone a breath screening test under section 40A and it appears to the officer that the test indicates that the proportion of alcohol in the person's breath exceeds 40 micrograms of alcohol per 100 millilitres of breath; or
- (b) the person fails or refuses to undergo a breath screening test without delay after having been required to do so by the officer under section 40A; or
- (c) the person could be required to undergo a breath screening test without delay under section 40A but cannot be tested because either a breath screening device is not readily available or for any reason a breath screening test cannot then be carried out, and there is good cause to suspect that the person has consumed alcohol.

(2) If it is not practicable for a person to undergo an evidential breath test at a place, to which the person has accompanied an enforcement officer under subsection (1), an enforcement officer may require the person to accompany the officer to any other place where it is likely that the person can undergo an evidential breath test or a blood test (or both).

(3) For the avoidance of doubt, it is declared that an enforcement officer may require a person to accompany the officer to a place under subsection (1) if:

- (a) it is likely that the person can undergo an evidential breath test at that place, whether or not it is likely that the person can undergo a blood test at that place; or
- (b) it is likely that the person can undergo a blood test at that place, whether or not it is likely that the person can undergo a blood test at that place.

(4) If the person:

- (a) has accompanied an enforcement officer to a place under this section; or
- (b) has been arrested under subsection (6) and taken to or detained at a place,

an enforcement officer may require the person to undergo without delay at that place an evidential breath test (whether or not the person has already undergone a breath screening test).

(5) A person must:

- (a) accompany the enforcement officer to a place when required to do so under this section; or
- (b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to undergo an evidential breath test or a blood test under this Act, or to accompany an enforcement officer to another place under this section; or
- (c) if the person has undergone an evidential breath test under this section, remain at the place where the person underwent the test until after the result of the test is ascertained.

(6) An enforcement officer may arrest without warrant a person who contravenes subsection (5).

(7) An enforcement officer may not require a person who is in a hospital or doctor's surgery as a result of an accident involving a motor vehicle to undergo an evidential breath test.

40C. Person may be required to undergo further evidential breath test if initial test fails to produce result-

(1) If for any reason an evidential breath test carried out under section 40B by an enforcement officer fails to produce a result, the enforcement officer may, at his or her discretion, either require the person to undergo without delay a further evidential breath test or proceed as if section 40E(1)(c) applies.

(2) A requirement made under subsection (1) is deemed to be a requirement under section 40B.

40D. Right to elect blood test – If the result of a person's evidential breath test is over 40 micrograms of alcohol per 100 millilitres of breath but under 50 micrograms of alcohol per 100 millilitres of breath, the person has the right, within 10 minutes of being advised by an enforcement officer of the matters specified in section 40K(3)(a) (which relates to the conditions of the admissibility of the test), to elect to have a blood test to assess the proportion of alcohol in his or her blood.

40E. Who must give blood specimen at places other than hospital or surgery-

(1) A person must permit a medical practitioner or medical officer to take a blood specimen from the person when required to do so by an enforcement officer if:

(a) the person fails or refuses to undergo without delay an evidential breath test after having been required to do so by an enforcement officer under section 40B; or

(b) the person has undergone an evidential breath test under section 40B, and -

(i) it appears to the officer that the test is positive; and

- (ii) within 10 minutes of being advised by an enforcement officer of the matters specified in section 40K(3)(a) (which sets out the conditions of the admissibility of the test), the person advises the officer that the person wishes to undergo a blood test; or
- (c) an evidential breath testing device is not readily available at the place to which the person has accompanied an enforcement officer under section 40B (whether or not at the time the requirement was made it was likely that the person could undergo an evidential breath test at that place) or to which the 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
- (d) the officer has arrested the person and has good cause to suspect that the person has committed an offence against any of sections 40 to 40E and either -
 - (i) a medical practitioner has examined the person and believes that the person may be under influence of drink or drug, or both; or
 - (ii) the person has refused to be examined by a medical practitioner for the purposes of this paragraph.

(2) A person who has been required by an enforcement officer under subsection (1) to permit the taking of a blood specimen must, without delay after being requested to do so by a medical practitioner or medical officer, permit that practitioner or medical officer to take blood specimen from that person.

(3) If it is not practicable for a blood specimen to be taken from a person by a medical practitioner or medical officer at a place where the person has been required under this section to permit the taking of a blood specimen, the person must accompany an enforcement officer to any other

place where it is likely that a blood specimen can be taken from the person by a medical practitioner or medical officer if the officer requires the person to do so.

(4) If a blood specimen taken under this section is insufficient to be divided into two (2) parts in accordance with section 40G:

(a) the person from whom the specimen was taken must permit a medical practitioner or medical officer to take a further blood specimen immediately after being requested to do so by the medical practitioner or medical officer; and

(b) a further blood specimen so taken is to be treated as part of the original blood specimen taken from the person.

(5) An enforcement officer may arrest a person without warrant if the person:

(a) fails or refuses to accompany an enforcement officer to a place when required to do so under this section; or

(b) having accompanied an enforcement officer to a place under this section, fails or refuses to remain at that place until requested by a medical practitioner or medical officer to permit a blood specimen to be taken under this section.

40F. Who must give blood specimen in hospital or surgery-(1) A person who is under examination, care or treatment in a hospital or doctor's surgery must permit a blood specimen to be taken from the person by:

(a) the medical practitioner who is in immediate charge of the examination, care or treatment of the person; or

(b) another medical practitioner or a medical officer.

(2) If a person under examination, care, or treatment in a hospital or doctor's surgery is unconscious, a blood specimen may be taken from the person under this section by:

(a) the medical practitioner who is in immediate charge of the examination, care, or treatment of the person; or

(b) another medical practitioner or a medical officer.

(3) The medical practitioner who is in immediate charge of the examination, care, or treatment of the person in a hospital or doctor's surgery:

(a) may cause a blood specimen to be taken by another medical practitioner or a medical officer; and

(b) must either take a blood specimen or cause a blood specimen to be taken by another medical practitioner or medical officer, if an enforcement officer requests him or her to do so,

whether or not the person has consented to taking of the specimen and whether or not the person is capable of giving consent.

(4) If the specimen originally taken is insufficient to be divided into two (2) parts in accordance with section 40G, the medical practitioner who is in immediate charge of the examination, care, or treatment of the person may take or cause to be taken by another medical practitioner or a medical officer a further blood specimen (which further specimen is for the purposes of this Act to be treated as a part of the original blood specimen taken from the person), whether or not the person has consented to the taking of the specimen and whether or not the person is capable of giving consent.

(5) Despite subsection (3)(b), a blood specimen may be taken under any provision of this section only if the medical practitioner:

(a) has reasonable grounds to suspect that the person is in hospital or doctor's surgery as a result of an accident involving a motor vehicle;

(b) has examined the person and is satisfied that the taking of blood specimen would not be prejudicial to the person's proper care or treatment; and

(c) tells the person (unless the person is unconscious) that the blood specimen is being or was taken under this section for evidential purposes.

(6) If a blood specimen is taken under this section from a person who is unconscious, the medical practitioner or medical officer who took the specimen must notify the person in writing as soon as practicable that the specimen was taken under this section for evidential purpose.

(7) No civil or criminal proceedings may be taken against the Government, a health service provider, or any other person in respect of the taking of a blood specimen under this section, or in respect of the sending of a blood specimen to an approved analyst, on the ground of lack of consent of a person whose consent to the taking of the blood specimen would have been otherwise required by law if this section had not been enacted.

(8) Nothing in subsection (7) applies to any proceeding on the ground of any negligent act or omission in the taking of a blood specimen.

40G. Procedure for dealing with blood specimens-(1) A blood specimen taken under section 40E or section 40F must be divided into two (2) parts, and:

- (a) each part must be placed in a separate bottle and the bottle must then be sealed; and
- (b) each part is a blood specimen for the purposes of this Act.

(2) One (1) or more preservative substances and anti-coagulant substances may be added to a blood specimen by placing them in the bottle, whether before or after the specimen is taken and placed in the bottle.

(3) In the case of a blood specimen taken under section 40E, an enforcement officer must, within seven (7) days after the date on which the specimen was taken, deliver or cause to be delivered (whether by courier or otherwise), or post by registered post or cause to be posted by registered post, both parts of the blood specimen to an approved

analyst for the analysis of one (1) of those parts and the custody of the other.

(4) In the case of a blood specimen taken under section 40F, the medical practitioner or medical officer by whom the specimen was taken must:

(a) within seven (7) days after the date on which the specimen was taken, deliver or cause to be delivered (whether by courier or otherwise), or post or cause to be posted by registered post, both parts of the blood specimen to an approved analyst for the analysis of one (1) of those parts and the custody of the other; and

(b) give the Commissioner a written notification -
(i) identifying the approved analyst to whom the parts of the blood specimen were (or are being) delivered or posted; and
(ii) naming the person from whom the blood specimen was taken.

(5) If a person from whom a blood specimen was taken wishes to have the specimen analysed by a private analyst:

(a) the person (or the person's solicitor or counsel) may apply to the Commissioner in accordance with subsection (7); and

(b) if the application complies with subsection (7) -

(i) the Commissioner, or a person authorised for the purpose by the Commissioner, must forward a copy of the application to the approved analyst to whom the blood specimen taken from the person was delivered or posted under subsection (3) or subsection (4); and

(ii) that analyst must send by registered post, personal delivery, or delivery by courier one (1) part of that blood specimen to the private analyst specified in the application.

(6) If an application under subsection (5) does not comply with subsection (7), the Commissioner or authorised person may refuse to forward a copy of the application to the approved analyst.

(7) An application under subsection (5)(a) must:

(a) be made in writing to the Commissioner not later than 28 days after -

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

(ii) if the defendant is arrested in respect of any such offence, the date on which the defendant is so arrested; or

(iii) in any case to which subparagraph (i) or subparagraph (ii) does not apply, the date on which the defendant is first charged in court with any such offence; and

(b) state the full name and address and the occupation of the person and the date of the alleged offence; and

(c) identify the private analyst to whom the part of the blood specimen is to be sent and the address of the private analyst.

(8) A blood specimen sent to an approved analyst under subsection (3) or subsection (4) may be destroyed at any time later than one (1) year after the date the specimen was so sent.

40H. Certificates in blood-alcohol proceedings-(1)

Except as provided in section 40L, production of a certificate to which this section applies in proceedings for an offence against driving while intoxicated is sufficient evidence, in the absence of proof to the contrary, of such of the matters as are stated in the certificate and of the sufficiency of the authority and qualifications of the person by whom the certificate is made and, in the case of a

certificate referred to in subsection (5), of the person who carried out the analysis.

(2) This section applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying that:

- (a) a specimen of venous blood was taken by the practitioner or medical officer in accordance with normal medical procedures from a person named in the certificate; and
- (b) the specimen was divided by the practitioner or medical officer into two (2) parts, or the specimen was insufficient for division and the practitioner or medical officer took a further specimen; and
- (c) the practitioner or medical officer placed and sealed in a separate bottle each part or specimen (as the case may be); and
- (d) each separate bottle was received by the practitioner or medical officer in a sealed blood specimen collecting kit; and
- (e) the practitioner or medical officer handed each such separate bottle to an enforcement officer named in the certificate.

(3) This section also applies to a certificate purporting to be signed by a medical practitioner and certifying that:

- (a) the person named in the certificate was in a hospital or doctor's surgery;
- (b) the practitioner, being a 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 any other medical practitioner or any medical officer from the person under section 40F;
- (c) at the time the blood specimen was taken from the person, the practitioner had reasonable grounds to suspect that the person was in the hospital or doctor's surgery as a result of an accident involving a motor vehicle; and

- (d) before taking the blood specimen or causing the blood specimen to be taken from the person, the practitioner examined the person and was satisfied that the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and
- (e) the practitioner either -
 - (i) told the person that the blood specimen was being or had been taken under section 40F for evidential purposes; or
 - (ii) if the person was unconscious when the specimen was taken, notified the person in writing as soon as practicable that the blood specimen was taken under section 40F for evidential purposes.

(4) This section also applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying:

- (a) all the matters referred to in paragraphs (a) to (d) of subsection (2);
- (b) that the practitioner or medical officer sent or caused to be sent by registered post, personal delivery, or delivery by courier, on a specified date, both parts of the specimen (or both specimens) to a specified approved analyst in accordance with section 40G; and
- (c) that the practitioner or medical officer notified the Commissioner in writing of the approved analyst to whom the parts of the specimen (or the specimens) were delivered or posted.

(5) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that:

- (a) a blood specimen in a sealed bottle was, on a specified date, delivered to an approved analyst (or a person employed by an approved laboratory and approved for the purpose by an approved analyst) for analysis, and was delivered by registered post or personal delivery or delivery by courier;
- (b) on 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
- (c) no such deterioration or congealing was found as would prevent a proper analysis.

(6) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that, following an application under section 40G, a part of a blood specimen was posted to a specified private analyst by registered post, personal delivery, or delivery by courier, and addressed to the private analyst at the address given in the application.

(7) For the purposes of this section, it is not necessary for the person making a certificate to specify his or her entitlement to give the certificate if the certificate indicates that the person belongs to the general category of persons who may make such a certificate.

40I. Certificates of compliance for evidential breath testing devices-(1) An evidential breath testing device must be supported by a certificate of compliance given under this section by a person approved for the purpose by the Minister.

(2) At any trial or defended hearing for an offence involving excess breath alcohol recorded by the device (being an offence committed on or after the commencement of this section), the prosecution must produce to the court a certified copy of the certificate of compliance.

The certification must be given by a person authorised for the purpose by the Commissioner and must state that the copy is a true copy of the original certificate.

(3) Subject to subsection (4), a certificate of compliance or a certified copy of it that is produced under subsection (2) is for all purposes conclusive evidence of the matters stated in the certificate, and neither the matters stated in the certificate nor the manufacturer's specifications for the device concerned may be challenged, called into question, or put in issue in any proceedings in respect of an offence involving excess breath alcohol recorded by the device.

(4) In the absence of proof to the contrary, a document purporting to be a certificate of compliance or a certified copy of a certificate of compliance:

- (a) must be treated as such a certificate or certified copy; and
- (b) is conclusive evidence of the sufficiency of the authority of the person who signed the document.

(5) The Minister may approve for each kind of evidential breath testing device the matters that are required to be stated in a certificate of compliance.

(6) Without limiting subsection (5):

- (a) in the case of any kind of evidential breath testing device approved after the commencement of this section, the approval under subsection (5) must be given in conjunction with the notice approving that kind of device;
- (b) an approval under subsection (5) must specify the maximum period of service for the relevant kind of device, and must require a certificate of compliance to specify the date on which that period began or begins;

- (c) an approval under subsection (5) must specify the maximum period permitted between the date on which a certificate of compliance is issued and the date by which a test result must be obtained, and must require a certificate of compliance to specify the date on which the certificate of compliance was issued;
- (d) an approval under subsection (5) must require a certificate of compliance to include a statement to the effect that the device is being maintained within the manufacturer's specifications.

40J. Presumptions relating to blood specimens-(1) In proceedings for an offence against this Act it is to be presumed, in the absence of proof to the contrary, that:

- (a) if a certificate referred to in section 40H names a person having the same name, address, and occupation as the defendant as the person from whom the specimen of blood was taken, the specimen was taken from the defendant;
- (b) every approved analyst who signed a certificate referred to in section 40H was duly authorised to sign it; and
- (c) if the bottle in which a blood specimen (or part of a blood specimen) was placed was received by a medical practitioner or medical officer in a sealed blood specimen collecting kit, the bottle contained a substance (whether or not a combination or mixture of two (2) or more substances) and that substance was a preservative and anti-coagulant.

(2) On the request of a person from whom a blood specimen has been taken under section 40E or section 40F, or of the person's solicitor or counsel, copies of any certificates referred to in subsection (1) that relate to that blood specimen must be supplied by the prosecutor to the person making the request.

40K. Presumptions relating to alcohol-testing-(1) 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 is to 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 the defendant's breath indicated by the test.

(2) 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 under section 40E or section 40F, it is to be conclusively presumed that the proportion of alcohol in the defendant's blood at the time of the alleged offence was the same as the proportion of alcohol in the blood specimen taken from the defendant.

(3) Except as provided in subsection (4), the result of a positive evidential breath test is not admissible in evidence in proceedings for an offence against any of sections 40 to 40E, if:

(a) the person who underwent the test is not advised by an enforcement officer, without delay after the result of the test is ascertained, that the test was positive and that, if the person does not request a blood test within 10 minutes -

(i) in the case of a positive test that indicates that the proportion of alcohol in the person's breath exceeds 40 micrograms of alcohol per 100 millilitres of breath, the test could of itself be conclusive

evidence to lead to that person's 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), that the person wishes to undergo a blood test; and

(ii) complies with section 40E(2).

(4) Subsection (3)(a) does not apply if the person who underwent the test fails or refuses to remain at the place where the person underwent the test until the person can be advised of the result of the test.

(5) The result of a positive evidential breath test is not rendered inadmissible under subsection (3) if:

(a) the test was carried out by means of a conclusive evidential breath testing device; and

(b) the test indicated that the proportion of alcohol in the breath of the person who underwent the test exceeded 50 micrograms of alcohol per 100 millilitres of breath.

(6) If it is proved in proceedings for an offence against section 40M that the defendant failed or refused to comply with section 40O without reasonable cause, that failure or 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, concerning the defendant's condition at the time of the alleged offence.

40L. Circumstances in which certificate not admissible in proceedings-(1) No certificate referred to in subsection (2) or subsection (3) or subsection (4) of section 40H (which certificates relate to the taking of a blood specimen by a medical practitioner or medical officer) is admissible in evidence in proceedings for an offence against this Act if the court, on application made by the defendant

not less than 14 days before the hearing, orders that the registered medical practitioner or medical officer who gave the certificate ought to appear as a witness at the hearing.

(2) No certificate referred to in section 40H (which certificate is given by an approved analyst and relates to the proportion of alcohol, a drug, or both, found to be in a blood specimen) is admissible in evidence in proceedings for an offence against this Act if:

- (a) application has been made in accordance with section 40G for one (1) part of the blood specimen to be sent to a private analyst; and
- (b) that part of the specimen has not been sent to the private analyst in compliance with the application,

but this subsection does not apply in respect of a specimen destroyed under the authority of section 40G(8) before the date of publication.

(3) No certificate referred to in subsection (5) or subsection (6) of section 40H (which certificate is given by an approved analyst and relates to the proportion of alcohol, a drug, or both, in a blood specimen, or to the sending of one (1) part of a specimen to a private analyst) is admissible in evidence in proceedings for an offence against this Act if the court, on application made by the defendant not less than 14 days before the hearing, orders that:

- (a) in the case of a certificate referred to in that subsection (5), the person who made the analysis or the approved analyst who gave the certificate ought to appear as a witness at the hearing; or
- (b) in the case of a certificate referred to in that subsection (6), the person who posted or delivered the part of the specimen, or the person who gave the part of the specimen to the courier, or the approved analyst who gave the certificate ought to appear as a witness at the hearing.

(4) The court may not make an order under subsection (3) unless the application made by the defendant under that subsection is accompanied by an affidavit, sworn by the private analyst who is specified in the defendant's application under section 40G, to the effect that:

- (a) since the date given to the private analyst as the date on which application was made under section 40G for the sending to the analyst of a blood specimen relating to the defendant, the analyst has not received any such specimen; or
- (b) the blood specimen received by the private analyst relating to the defendant -
 - (i) was not suitable for analysis; or
 - (ii) was suitable for analysis but, for specified reasons, that analysis was not carried out; or
 - (iii) was suitable for analysis and that analysis was carried out but, for specified reasons, the results of the analysis are not available; or
- (c) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain not more than 80 milligrams of alcohol per 100 millilitres of blood; or
- (d) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain 20 milligrams or more of alcohol per 100 millilitres of blood more or less than the proportion of alcohol per 100 millilitres of blood specified in the certificate referred to in section 40H.

(5) Where a blood specimen is destroyed in accordance with section 40G, that act does not affect the admissibility in proceedings of a certificate given in respect of the specimen by an approved analyst for the purposes of this Act.

40M. Failure or refusal to remain at specified place or to accompany enforcement officer-(1) A person

commits an offence if the person:

- (a) fails or refuses to remain at the place where the person underwent a breath screening test under section 40A until after the result of the test is ascertained;
- (b) fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 40B; or
- (c) having accompanied an enforcement officer to a place under a requirement under section 40B or section 40E -
 - (i) fails or refuses to remain at that place until the person is required either to undergo an evidential breath test or a blood test under this Act; or
 - (ii) fails or refuses to accompany an enforcement officer to another place under either of those sections; or
- (d) having undergone an evidential breath test under a requirement under section 40B, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained.

(2) If a person is convicted of an offence against subsection (1):

- (a) the maximum penalty is a fine not exceeding 50 penalty units; and
- (b) the court may disqualify the person from holding or obtaining a driver licence for such period as the court thinks fit.

40N. Failure or refusal to permit blood specimen to be taken-(1) A person commits an offence if the person:

- (a) fails or refuses to permit a blood specimen to be taken after having been required to do so under section 40E by an enforcement officer;

- (b) fails or refuses to permit a blood specimen to be taken without delay after having been requested to do so under section 40E by a medical practitioner or medical officer; or
- (c) is a person from whom a medical practitioner or medical officer may take a blood specimen under section 40F and refuses or fails to permit such a person to take a blood specimen.

(2) If a person is convicted of an offence against subsection (1):

- (a) the maximum penalty is imprisonment for a term not exceeding one (1) year or a fine not exceeding 20 penalty units; and
- (b) the court must order the person to be disqualified from holding or obtaining a driving licence for six (6) months or more.

40O. Drivers and other road users to comply with directions of enforcement officers, etc.-(1) A person must comply with sections 40A, 40B, 40C, 40E and 40F (which relate to the administration of breath screening tests, evidential breath tests, and blood tests).

(2) A person must comply with all lawful requirements, directions, and requests made by an enforcement officer under any of sections 40A, 40B, 40C, 40E and 40F.

(3) A person must comply with all lawful requirements and requests made by a medical practitioner or medical officer under section 40E or section 40F (which relate to the administration of blood tests).

(4) A person commits an offence punishable by six (6) months imprisonment or a fine not exceeding 10 penalty units, if the person fails to comply with any lawful requirement or direction given by an enforcement officer, to which this section applies.

40P. Defences-(1) It is a defence to proceedings for an offence against section 40N (which relates to failing or refusing to supply a blood specimen) if the court is satisfied,

on the evidence of a medical practitioner, that the taking of a blood specimen from the defendant would have been prejudicial to the defendant's health.

(2) It is no defence to proceedings for an offence that a provision forming part of sections 40A to 40I, and 40K has not been strictly complied with or has not been complied with at all, provided there has been reasonable compliance with such of those provisions as apply.

(3) In any proceedings against any person for an offence against section 40O(4) arising out of circumstances in which an enforcement officer exercised powers under section 40Q and in respect of which a breath screening test or an evidential breath test or a blood test was undergone by the person, it is no defence that:

- (a) the breath screening test or evidential breath test indicated that the proportion of alcohol in the person's breath did not exceed 40 micrograms of alcohol per 100 millilitres of breath; or
- (b) any evidence given in respect of the results of a blood test indicates that the proportion of alcohol in the person's blood did not exceed 80 milligrams of alcohol per 100 millilitres of blood.

(4) It is no defence to proceedings for an offence against section 40N (which relates to failing or refusing to supply a blood specimen) that:

- (a) there was or may have been an error in the result of the breath screening test or evidential breath test; or
- (b) the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test or a blood test.

(5) It is no defence to proceedings for an offence against this Act in respect of the proportion of alcohol in a person's breath:

- (a) that there was or may have been an error in the result of the breath screening test or evidential breath test; or
- (b) that the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test.

(6) It is no defence to proceedings for an offence against this Act in respect of the proportion of alcohol in a person's blood:

- (a) that there was or may have been an error in the result of the breath screening test or evidential breath test; or
- (b) that the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test or a blood test.

40Q. Arrest of persons for alcohol or drug-related offences, or assault on enforcement officer-(1) An enforcement officer may arrest a person without warrant if the officer has good cause to suspect that the person:

- (a) has committed an offence against any of sections 40, 40M, 40N or 40O; or
- (b) has assaulted that or any other enforcement officer while the officer was acting in the course of the officer's official duties.

(2) The powers conferred by this section are in addition to any other powers of arrest under this or any other enactment."

The Road Traffic (Breathalyser) Amendment Act 2009 is administered by the Ministry of Police and Prison.

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