



I assent.

[L.S.]

P. K. GANILAU

Governor-General

7th August 1986

AN ACT

TO AMEND THE TRAFFIC ACT

ENACTED by the Parliament of Fiji—

Short title, commencement

1. This Act may be cited as the Traffic (Amendment) Act, 1986, and shall come into force on the day which the Minister, by notice in the *Gazette*, appoints.

New section 48

2. The following section is inserted in the Traffic Act after section 47—

*"Prescribed concentration of alcohol
in driver's breath or blood*

48.—(1) A person who, whilst there is present in his breath or in his blood a concentration of alcohol equal to or in excess of the prescribed limit—

- (a) drives a motor vehicle;
 - (b) attempts to drive a motor vehicle; or
 - (c) is in charge of a motor vehicle on a road or other public place,
- is guilty of an offence.

(2) It is a defence for a person charged with an offence under paragraph (1)(c) to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath or in his blood remained likely to exceed the prescribed limit.

(3) A police officer may require—

- (a) the driver of a motor vehicle;
- (b) a person who that officer has reasonable cause to believe is attempting to drive a motor vehicle;
- (c) a person who that officer has reasonable cause to believe is in charge of a motor vehicle on a road or other public place;
- (d) a person who that officer has reasonable cause to believe—
 - (i) was the driver of a motor vehicle within the last 2 preceding hours; and
 - (ii) has behaved whilst driving that motor vehicle in a manner which indicates that his ability to drive the motor vehicle is impaired; or
- (e) a person who that officer has reasonable cause to believe was the driver of a motor vehicle that, within the last 2 preceding hours, was involved in an accident,

to undergo a breath test in accordance with the directions of that police officer.

(4) Any police officer may, upon reasonable grounds, enter upon any premises without a warrant for the purpose of making a requisition pursuant to subsection (3).

(5) Where—

- (a) it appears to a police officer in consequence of a breath test carried out by him on a person under subsection (3) that the device by means of which the test was carried out indicates that there may be present in that person's breath a concentration of alcohol of more than the prescribed limit; or
- (b) a person required by a police officer under subsection (3) to undergo a breath test refuses to undergo that test in accordance with the directions of that officer,

that officer may thereupon arrest that person without warrant and take him or cause him to be taken, with such force as may be necessary, to a police station or such other place as that officer considers desirable and there detain him or cause him to be detained for the purposes of the following provisions of this section.

(6) A police officer may require a person who has been arrested under subsection (5) to submit, in accordance with the directions of that officer, to a breath analysis.

(7) A police officer shall not require a person to undergo a breath test or to submit to a breath analysis—

- (a) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of that person's treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance with the requisition would be prejudicial to the proper care or treatment of that person; or
- (b) if it appears to that police officer that it would, by reason of injuries sustained by that person, be dangerous to that person's medical condition to undergo a breath test or submit to a breath analysis.

(8) A person who, when required by a police officer to undergo a breath test under subsection (3), refuses or fails to undergo the breath test in accordance with the directions of that officer, is guilty of an offence and is liable on conviction to a fine not exceeding \$200.

(9) A person who—

- (a) upon being required under subsection (6) by a police officer to submit to a breath analysis, refuses or fails to undergo that analysis in accordance with the directions of that officer; or
- (b) between the time of the event referred to in paragraph (1) (a), (1) (b) or (1) (c) in respect of which he has been required by a police officer to undergo a breath test and the time when he undergoes that test or, if he is required by an officer to submit to a breath analysis, the time when he submits to that analysis, wilfully does anything to alter the concentration of alcohol in his breath, is guilty of an offence.

(10) (a) Subject to paragraph (10) (b), it is a defence for a person charged with an offence under subsection (8) or paragraph (9) (a) to prove that at the time he is alleged to have committed that offence he was unable, on medical grounds, to undergo a breath test or to submit to a breath analysis, as the case may be.

(b) The defence referred to in paragraph (10) (a) shall not be available to a person unless—

- (i) forthwith upon refusing or being unable to undergo a breath test or breath analysis in accordance with the directions of a police officer, he consented to a sample of his blood being taken for analysis in accordance with paragraph (10) (c) and he co-operated in allowing that blood sample to be duly taken without any delay on his part; and
- (ii) where the substantive medical grounds relied on in a defence under paragraph (10) (a) are that he was not then capable of supplying sufficient breath for test or for analysis, he made a

genuine attempt to supply a specimen of breath for test or for analysis by complying to the best of his ability with the directions of the police officer.

(c) Where a sample of blood is taken for analysis pursuant to this subsection, it shall be taken by a medical practitioner nominated by a police officer and it shall be taken in the presence of that police officer at a hospital or other place nominated by the officer.

(d) A medical practitioner by whom a sample of a person's blood is taken pursuant to this subsection, shall hand that sample of blood, enclosed in a suitable sealed container, to the police officer present at the time the sample was taken.

(e) In proceedings for an offence under subsection (1) evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis made of the blood taken pursuant to this subsection, and the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the blood of that person at the time of the occurrence of the event referred to in paragraph (1) (a), (b) or (c), as the case may be, where the blood sample was taken within 2 hours after the relevant event, unless the defendant proves that the concentration of alcohol in his blood at the time of the relevant event was less than the prescribed limit.

(11) As soon as practicable after a person has undergone a breath analysis the operator of the breath analysing instrument shall deliver to that person either—

- (a) a statement in writing signed by the operator; or
- (b) a statement automatically produced by the breath analysing instrument,

specifying—

- (c) the concentration of alcohol determined by the analysis to be present in that person's breath and expressed in microgrammes of alcohol in 100 millilitres of breath; and
- (d) the day on and time of the day at which the breath analysis was completed.

(12) In proceedings for an offence under subsection (1) evidence may be given of the concentration of alcohol present in the breath of the person charged, as determined by a breath analysing instrument operated by a police officer authorised in that behalf by the Commissioner of Police, and the concentration of alcohol determined as aforesaid shall be deemed to be the concentration of alcohol in the breath of that person at the time of the occurrence of the event referred to in paragraph (1) (a), (b) or (c), as the case may be, where the breath analysis was made within 2 hours after the event, unless the defendant

proves that the concentration of alcohol in his breath at the time of that event was less than the prescribed limit.

(13) (a) In proceedings for an offence under subsection (1) a certificate purporting to be signed by a police officer certifying any of the following facts namely that—

- (i) he is authorised by the Commissioner of Police to operate breath analysing instruments;
- (ii) a person named therein submitted to a breath analysis;
- (iii) the apparatus used by him to make the breath analysis was a breath analysing instrument within the meaning of this Act;
- (iv) the apparatus operated by him was in proper working order and adjusted correctly;
- (v) the apparatus was operated by him in the proper and correct manner to give an accurate reading;
- (vi) the analysis was made on the day and completed at the time stated in the certificate;
- (vii) the concentration of alcohol determined by that breath analysing instrument and expressed in microgrammes of alcohol in 100 millilitres of breath was present in the breath of that person on the day and at the time stated in the certificate; and
- (viii) a statement required by subsection (11) was delivered in accordance with that subsection,

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

(b) In any proceedings for an offence under this section, the prosecution shall be allowed to re-open its case at any time before judgment is given, and adduce evidence in rebuttal of any evidence raised by the defendant.

(14) A person convicted of an offence against subsection (1) or (9) is liable to the following penalties—

(a) where that person has no previous conviction within the last preceding 5 years for an offence against subsection (1) or (9) or section 39—

- (i) a fine not exceeding \$400; and
- (ii) mandatory disqualification from holding or obtaining a driving licence for a period of not less than 3 months nor more than 2 years;

(b) where that person has one previous conviction within the last preceding 5 years for an offence against subsection (1) or (9) or section 39—

- (i) a fine not exceeding \$800;

- (ii) mandatory disqualification from holding or obtaining a driving licence for a period of not less than 6 months nor more than 4 years; and
 - (iii) imprisonment for a term not exceeding 6 months; and
- (c) where the defendant has 2 or more convictions within the last preceding 5 years for an offence under subsection (1) or (9) or section 39—
- (i) a fine not exceeding \$1,500;
 - (ii) mandatory disqualification from holding or obtaining a driving licence for a period of 5 years; and
 - (iii) mandatory imprisonment for not less than 3 months nor more than 2 years.

(15) (a) A person convicted of an offence under subsection (1) or (9) is not liable to conviction for an offence against section 39 arising out of the same circumstances.

(b) A person convicted of an offence under section 39 is not liable to conviction for an offence against subsection (1) or (9) arising out of the same circumstances.

(c) A person may be charged jointly with offences under subsections (1), (8) and (9) but he shall not be liable—

- (i) if convicted for an offence under subsection (1), to be convicted also for an offence under subsection (9); or
- (ii) if convicted for an offence under subsection (9), to be convicted also for an offence under subsection (1).

(16) (a) The fact that a person has undergone a breath test or submitted to a breath analysis, the result of a breath test or breath analysis or the fact that a person has been convicted of an offence under this section shall not, for the purposes of any contract of insurance, be admissible as evidence of the fact that that person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle, but nothing in this subsection precludes the admission of any other evidence to show any such fact.

(b) The provisions of this subsection have effect notwithstanding anything contained in any contract of insurance, and any covenant, term, condition or provision therein is to the extent that the operation of this subsection is excluded, limited, modified or restricted, void.

(17) In this section—

“breath testing device” means a device, not being a breath analysing instrument, of a type approved by the Minister by regulation;

- “breath analysing instrument” means any instrument of a type approved by the Minister by regulation as being designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in that person's breath;
- “breath test” means a test carried out by a breath testing device for the purpose of indicating the concentration of alcohol present in a person's breath;
- “breath analysis” means a test carried out by a breath analysing instrument for the purpose of ascertaining by analysis of a person's breath, the concentration of alcohol present in that person's breath.
- “the prescribed limit” means—
- (a) in the case of breath, 35 microgrammes of alcohol in 100 millilitres of breath; and
 - (b) in the case of blood, 80 milligrammes of alcohol in 100 millilitres of blood.

(18) The Minister may make regulations—

- (a) prescribing the form of any statement or certificate referred to in this section;
- (b) to approve a device as a breath testing device;
- (c) to approve an instrument as a breath analysing instrument.”.

Passed by the House of Representatives this third day of July, in the year of our Lord one thousand, nine hundred and eighty-six.

Passed by the Senate this thirty-first day of August, in the year of our Lord one thousand, nine hundred and eighty-six.