

South Australia

Road Traffic (Penalties) Amendment Bill 2006

A BILL FOR

An Act to amend the *Road Traffic Act 1961*; and to make a related amendment to the *Criminal Law Consolidation Act 1935*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Road Traffic (Penalties) Amendment Act 2006*.

2—Commencement

- 5 This Act will come into operation 1 month after the date of assent.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Road Traffic Act 1961*

10 4—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *accident* insert:

aggravated offence—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to an aggravated offence is a reference to the offence in its aggravated form;

- 15 (2) Section 5(1)—after the definition of *axle group* insert:

basic offence—where a provision differentiates between the penalty for an aggravated offence and the penalty for a basic offence, the reference to a basic offence is a reference to the offence in its non-aggravated form;

5—Amendment of section 43—Duty to stop, give assistance and present to police where person killed or injured

(1) Section 43(1), penalty provision—delete the penalty provision and substitute:

Penalty:

- 5 (a) for a basic offence—
- (i) imprisonment for 5 years; and
 - (ii) disqualification from holding or obtaining a driver's licence for such period, being not less than 1 year, as the court thinks fit;
- 10 (b) for an aggravated offence—
- (i) imprisonment for 7 years; and
 - (ii) disqualification from holding or obtaining a driver's licence for such period, being not less than 2 years, as the court thinks fit.

15 (2) Section 43—after subsection (1) insert:

- (1a) For the purposes of subsection (1), an aggravated offence is an offence committed in any of the following circumstances:
- (a) the offender committed the offence in the course of attempting to escape pursuit by a member of the police force;
 - (b) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under this Act;
 - (c) the offender was, at the time of the offence, driving a vehicle in contravention of a provision of Division 4 or in contravention of section 47, 47B or 47BA.
- 30 (1b) If a person is charged with an aggravated offence against subsection (1), the circumstances alleged to aggravate the offence must be stated in the instrument of charge.

6—Amendment of section 44B—Misuse of motor vehicle

(1) Section 44B—after subsection (3) insert:

- 35 (3a) If a court convicts a person of an offence against subsection (3) that is an aggravated offence the following provisions apply:
- (a) the maximum penalty for the offence is 12 months imprisonment; and
 - (b) the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than 6 months, as the court thinks fit; and
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- (c) the disqualification prescribed by paragraph (b) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence.

(3b) For the purposes of this section, an aggravated offence is—

- (a) an offence that caused the death of, or serious harm to, a person; or
- (b) an offence committed in any of the following circumstances:
 - (i) the offender committed the offence in the course of attempting to escape pursuit by a member of the police force;
 - (ii) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under this Act;
 - (iii) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A, 47, 47B or 47BA.

(3c) If a person is charged with an aggravated offence against subsection (3), the circumstances alleged to aggravate the offence must be stated in the instrument of charge.

(2) Section 44B—after subsection (5) insert:

(6) In this section—

serious harm means—

- (a) harm that endangers, or is likely to endanger, a person's life; or
- (b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
- (c) harm that consists of, or is likely to result in, serious disfigurement.

7—Amendment of section 45—Careless driving

Section 45(3)(b)(iii) and (iv)—delete subparagraphs (iii) and (iv) and substitute:

- (iii) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A, 47, 47B or 47BA.

8—Amendment of section 45A—Excessive speed

(1) Section 45A(1), penalty provision—delete the penalty provision and substitute:

Penalty:

- (a) for a first offence that is a basic offence—a fine of not less than \$700 and not more than \$1 200;

- (b) for a first offence that is an aggravated offence or for a subsequent offence that is a basic offence—12 months imprisonment;
- (c) for a subsequent offence that is an aggravated offence—2 years imprisonment.

5 Expiation fee: \$500.

(2) Section 45A—after subsection (2) insert:

(2a) For the purposes of this section, an aggravated offence is—

- (a) an offence that caused the death of, or serious harm to, a person; or
- 10 (b) an offence committed in any of the following circumstances:
 - (i) the offender committed the offence in the course of attempting to escape pursuit by a member of the police force;
 - 15 (ii) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under this Act;
 - 20 (iii) the offender was, at the time of the offence, driving a vehicle in contravention of section 47, 47B or 47BA.

25 (2b) If a person is charged with an aggravated offence against subsection (1), the circumstances alleged to aggravate the offence must be stated in the instrument of charge.

(3) Section 45A(3)(a)(i)—after "first offence" insert:

that is a basic offence

(4) Section 45A(3)(a)(ii)—delete "in the case of a subsequent offence" and substitute:

in any other case

30 (5) Section 45A—after subsection (5) insert:

(6) In this section—

serious harm means—

- (a) harm that endangers, or is likely to endanger, a person's life; or
- 35 (b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
- (c) harm that consists of, or is likely to result in, serious disfigurement.

9—Amendment of section 46—Reckless and dangerous driving

(1) Section 46(1), penalty provision—delete the penalty provision and substitute:

Penalty:

- (a) for a basic offence—imprisonment for 2 years;
- (b) for an aggravated offence—imprisonment for 5 years.

(2) Section 46—after subsection (2) insert:

(2a) For the purposes of subsection (1), an aggravated offence is an offence committed in any of the following circumstances:

- (a) the offender committed the offence in the course of attempting to escape pursuit by a member of the police force;
- (b) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under this Act;
- (c) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A, 47, 47B or 47BA.

(2b) If a person is charged with an aggravated offence against subsection (1), the circumstances alleged to aggravate the offence must be stated in the instrument of charge.

(3) Section 46(3)—after "subsection (1)" insert:

in which the vehicle concerned was a motor vehicle

(4) Section 46(3)(a)(i)—after "first offence" insert:

that is a basic offence

(5) Section 46(3)(a)(ii)—delete "in the case of a subsequent offence" and substitute:

in any other case

10—Amendment of section 47—Driving under influence

(1) Section 47(1), penalty provision—delete the penalty provision and substitute:

Penalty:

- (a) if the vehicle concerned was a motor vehicle—
 - (i) for a basic offence—imprisonment for 2 years;
 - (ii) for an aggravated offence—imprisonment for 5 years;
- (b) if the vehicle concerned was not a motor vehicle—\$500.

(2) Section 47—after subsection (2) insert:

(2a) For the purposes of this section, an aggravated offence is—

(a) an offence that caused the death of, or serious harm to, a person; or

(b) an offence committed in any of the following circumstances:

(i) the offender committed the offence in the course of attempting to escape pursuit by a member of the police force;

(ii) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under this Act;

(iii) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A, 46, 47B or 47BA.

(2b) If a person is charged with an aggravated offence against subsection (1), the circumstances alleged to aggravate the offence must be stated in the instrument of charge.

(3) Section 47(3)(a)(i)—after "first offence" insert:

that is a basic offence

(4) Section 47(3)(a)(ii)—delete "in the case of a subsequent offence" and substitute:

in any other case

Schedule 1—Related amendment to *Criminal Law Consolidation Act 1935*

1—Amendment of section 5AA—Aggravated offences

Section 5AA(1a)(d) and (e)—delete paragraphs (d) and (e) and substitute:

(d) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A, 47, 47B or 47BA of the *Road Traffic Act 1961* or operating a vessel in contravention of section 70(1) or (2) of the *Harbors and Navigation Act 1993*.