

House of Assembly—No 43A

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8 February 2005

South Australia

Statutes Amendment (Drink Driving) Bill 2004

A BILL FOR

An Act to amend the *Motor Vehicles Act 1959* and the *Road Traffic Act 1961*.

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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 *Statutes Amendment (Drink Driving) Act 2004*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

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 *Motor Vehicles Act 1959*

4—Amendment of section 81C—Disqualification for certain drink driving offences

(1) Section 81C(2)(a)—delete subparagraphs (i), (ii) and (iii) and substitute:

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- (i) if the offence is a second offence—3 months; or
 - (ii) if the offence is a third offence—6 months; or
 - (iii) if the offence is a subsequent offence—12 months; and

(2) Section 81C(7)—delete "will be taken into account, but only if the previous offence was committed" and substitute:

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- or that has been expiated will be taken into account, but only if the previous offence was committed or, in the case of an offence that has been expiated, was alleged to have been committed, by the person

5—Amendment of section 93—Notice to be given to Registrar

(1) Section 93(1)—after paragraph (c) insert:

- 15
- or
- (d) makes an order under section 47IAB of the *Road Traffic Act 1961*,

(2) Section 93(1)—delete "of the finding or order (including the period of any disqualification)" and substitute:

and effect of the finding or order

20 Part 3—Amendment of *Road Traffic Act 1961*

6—Amendment of section 47A—Interpretation

(1) Section 47A(1)—after the definition of *gross vehicle mass* insert:

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prescribed circumstances—a requirement to submit to an alcotest or breath analysis under section 47E, or a direction to stop a vehicle for the purpose of making such a requirement, is made or given in prescribed circumstances if the member of the police force who makes the requirement or gives the direction believes on reasonable grounds that the person of whom the requirement is, or is to be, made has, within the preceding 2 hours—

- 30
- (a) committed an offence of a prescribed class; or
 - (b) behaved in a manner that indicates that his or her ability to drive a motor vehicle is impaired; or
 - (c) been involved as a driver in an accident;

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

(2a) For the purposes of this Act, a member of the police force *exercises random testing powers* if, in accordance with section 47E—

- 5 (a) the member requires a person to submit to an alcotest or breath analysis or directs a person driving a motor vehicle to stop the vehicle for the purpose of requiring a person to submit to an alcotest or breath analysis; and
- (b) the requirement is made, or the direction is given, otherwise than in prescribed circumstances.

10 (3) Section 47A(3)—after "47B(4)," insert:

47B(6),

7—Amendment of section 47B—Driving while having prescribed concentration of alcohol in blood

Section 47B(7)—delete subsection (7)

8—Amendment of section 47DA—Breath testing stations

Section 47DA(3) and (4)—delete subsections (3) and (4) and insert:

- 20 (3) If a breath testing station is established in the vicinity of an event being held outside Metropolitan Adelaide for the purpose of enabling alcotests to be conducted in relation to persons who have attended the event, signs advising of the establishment of the breath testing station must be displayed in positions where people arriving at the event are likely to see them (however a prosecution for an offence will not fail because of any non-compliance with this subsection).

9—Amendment of section 47E—Police may require alcotest or breath analysis

25 (1) Section 47E(1) to (2c) (inclusive)—delete subsections (1) to (2c) (inclusive) and substitute:

(1) Subject to this Act, if a member of the police force (whether or not performing duties at or in connection with a breath testing station) believes on reasonable grounds that a person—

- 30 (a) is driving, or has driven, a motor vehicle; or
- (b) is attempting, or has attempted, to put a motor vehicle in motion; or
- (c) is acting, or has acted, as a qualified passenger for a learner driver,

35 the member of the police force may require the person to submit to an alcotest or a breath analysis, or both.

40 (2) A member of the police force may direct a person driving a motor vehicle to stop the vehicle and may give other reasonable directions for the purpose of making a requirement under this section that a person submit to an alcotest or a breath analysis.

(2a) A person must forthwith comply with a direction under subsection (2).

(2ab) A person must not, in the exercise of random testing powers, be required to submit to a breath analysis unless an alcotest conducted under subsection (1) indicates that the prescribed concentration of alcohol may be present in the blood of the person .

(2b) An alcotest or a breath analysis to which a person has been required to submit under subsection (1) may not, in any event, be commenced more than 2 hours after the conduct of the person giving rise to the requirement.

(2) Section 47E(2f)—delete subsection (2f)

(3) Section 47E(8), (9) and (10)—delete subsections (8), (9) and (10) and substitute:

(8) The Commissioner of Police must, in his or her annual report to the Minister responsible for the administration of the *Police Act 1998*, include the numbers of drivers required to submit to alcotest in the course of the exercise of random testing powers (otherwise than at breath testing stations established in accordance with section 47DA).

10—Insertion of section 47EA

Before section 47EA (now to be redesignated as section 47EB) insert:

47EA—Exercise of random testing powers

The following provisions apply in relation to the exercise of random testing powers consisting of the giving of a direction to stop a motor vehicle or the making of a requirement to submit to an alcotest:

(a) a member of the police force must not give such a direction or make such a requirement unless the member of the police force is in uniform;

(b) if the member of the police force is driving or riding in or on a vehicle at the time of giving such a direction—the vehicle must be marked as a police vehicle or must be displaying a flashing blue or red light (whether or not it is also displaying other lights) or sounding an alarm;

(c) a member of the police force must not make such a requirement unless he or she has in his or her possession, or a member of the police force in the immediate vicinity of the place at which the requirement is made has in his or her possession, an apparatus of a kind approved by the Governor for the conduct of alcotests;

(d) the Commissioner of Police must establish procedures to be followed by members of the police force in the exercise of such powers, being procedures designed to prevent as far as reasonably practicable any undue delay or inconvenience to persons being subjected to the powers.

11—Amendment of section 47GA—Breath analysis where drinking occurs after driving

(1) Section 47GA(2)(a), (b) and (c)—delete paragraphs (a), (b) and (c) and substitute:

- 5 (a) that the defendant consumed alcohol during the relevant period; and
- (b) that the alcohol was not consumed by the defendant after a member of the police force first exercised powers under section 47E preliminary to the performance of the breath analysis; and
- 10 (c) where the requirement to submit to the breath analysis was made after the defendant's involvement as a driver in an accident—that the defendant discharged the duties under this Act required to be discharged at the scene of an accident by a driver of a vehicle involved in the accident; and

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

15 (3) In subsection (2)—

relevant period means the period between—

- (a) the conduct of the defendant giving rise to the making of the requirement under section 47E(1) that the defendant submit to the breath analysis; and
- (b) the performance of the breath analysis.

20 **12—Insertion of sections 47IAA and 47IAB**

After section 47I insert:

47IAA—Power of police to impose immediate licence disqualification or suspension

(1) This section applies to the following offences:

- 25 (a) a category 2 offence;
- (b) a category 3 offence;
- (c) an offence against section 47E(3);
- (d) an offence against section 47I(14) committed by a person who was the driver of a motor vehicle involved in the
- 30 accident.

(2) Subject to this section, if a member of the police force reasonably believes that a person has, after the commencement of this section, committed an offence to which this section applies, the police officer may give the person a notice of immediate licence disqualification or suspension in the prescribed form.

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(3) The notice must specify the offence to which the notice relates.

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- (4) If a person is given a notice of immediate licence disqualification or suspension under subsection (2)—
- (a) in the case of a person who does not hold a driver's licence—the person is disqualified from holding or obtaining a driver's licence for the relevant period; or
 - (b) in the case of a person who holds a driver's licence—the person's driver's licence is suspended for the relevant period.
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- (5) The Commissioner of Police must ensure that prescribed particulars of a notice of immediate licence disqualification or suspension given to a person under this section are forwarded to the Registrar of Motor Vehicles.
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- (6) The Registrar of Motor Vehicles must, on receiving particulars of a notice of immediate licence disqualification or suspension from the Commissioner of Police, send, by post, a notice to the person of the name and address specified by the Commissioner containing the prescribed particulars of the notice of immediate licence disqualification or suspension.
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- (7) The operation of a notice of immediate licence disqualification or suspension is not affected by any failure to comply with subsection (6).
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- (8) If the person is not charged with the offence specified in the notice as the offence to which the notice relates but is charged with another offence to which this section applies, that offence will then be taken to be the offence to which the notice relates.
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- (9) The period for which a disqualification or suspension has applied to a person under this section as a result of the person having been given a notice of immediate licence disqualification or suspension will be counted as part of any period of disqualification that is imposed on the person in relation to the offence to which the notice relates by order of a court under this Division.
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- (10) Subject to subsection (11), no compensation is payable by the Crown or a police officer in respect of the exercise of powers under this section.
- (11) Subsection (10) does not protect a police officer from liability in respect of the exercise of powers otherwise than in good faith.
- (12) For the purposes of this section—
- (a) the *relevant period* commences—
 - (i) at the time at which the person is given the notice referred to in subsection (2); or
 - (ii) if the person is already disqualified from holding or obtaining a driver's licence or holds a driver's licence that is suspended, at the end of that period of disqualification or suspension; and
 - (b) the *relevant period* ends—
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- (i) if the Magistrates Court, on application under section 47IAB, makes an order that the person given the notice is not disqualified, or that the driver's licence held by the person is not suspended, by the notice; or
- (ii) if the Magistrates Court reduces the period of disqualification or suspension on application under section 47IAB, when that period ends; or
- 10 (iii) if proceedings for the offence to which the notice relates are determined by a court or are withdrawn or otherwise discontinued; or
- (iv) in any event—
- (A) if the offence to which the notice relates is a category 2 offence—at the end of 6 months from the commencement of the relevant period; or
- 15 (B) in any other case—at the end of 12 months from the commencement of the relevant period.

20 **47IAB—Application to Court to have disqualification or suspension lifted**

- 25 (1) A person who has been given a notice of immediate licence disqualification or suspension under section 47IAA or has been sent particulars of such a notice by the Registrar of Motor Vehicles may apply to the Magistrates Court for an order—
- (a) that the person is not disqualified, or the person's driver's licence is not suspended, by the notice; or
- (b) reducing the period of disqualification or suspension applicable under the notice.
- 30 (2) The Magistrates Court may, on an application under subsection (1), make an order—
- (a) that the person is not disqualified, or the person's driver's licence is not suspended, by the notice if the Court is satisfied, on the basis of evidence given by or on behalf of the applicant, that there is a reasonable prospect that the applicant would, in proceedings for the offence to which the notice relates, be acquitted of the offence and the evidence before the Court does not suggest that the applicant may be guilty of another offence to which section 47IAA applies; or
- 35 (b) reducing the period of disqualification or suspension applicable under the notice if—
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- (i) the offence to which the notice relates is a category 2 or category 3 offence that is a first offence and the Court is satisfied, on the basis of evidence given by or on behalf of the applicant, that there is a reasonable prospect that the applicant might, in proceedings for the offence to which the notice relates, successfully argue that the offence was trifling (in which case the Court must order that the period of disqualification or suspension be reduced to a period of 1 month); or
 - (ii) the offence to which the notice relates is a category 3 offence and the Court is satisfied, on the basis of evidence given by or on behalf of the applicant, that there is a reasonable prospect that the applicant would, in proceedings for the offence to which the notice relates, be acquitted of the offence but the evidence before the Court suggests that the applicant may be guilty of a category 2 offence (in which case the Court must order that the period be reduced to a period of 6 months).
- (3) The application must be commenced by lodging written application with the Magistrates Court, in the form prescribed by rules of the Court, setting out the grounds on which the application is made and particulars of the evidence that will be relied on by the applicant.
- (4) The Commissioner of Police—
- (a) must be served, by an applicant for an order under this section, with a copy of the application as soon as practicable after the application is made; and
 - (b) is a party to the application; and
 - (c) may (but is not required to) appear at the hearing represented by legal counsel or a member of the police force.
- (5) If the Commissioner of Police does not appear at the hearing, the clerk of the Court must notify the Commissioner of Police, in writing, of the date on which the application was determined and the nature and effect of any order made in relation to the application.

13—Substitution of section 52

Section 52—delete the section and substitute:

52—Cessation of alcohol interlock licence

- 5 (1) If the holder of a driver's licence subject to alcohol interlock scheme
conditions surrenders the licence or ceases to hold the licence for any
other reason before the conditions have applied in relation to the
person for the required period—
- 10 (a) in the case of a licence that is surrendered—the person is, on
surrender of the licence, disqualified from holding or
obtaining a licence for a period equal to the number of days
remaining in the period of the person's disqualification for
the relevant drink driving offence immediately before the
issuing of the licence; or
- 15 (b) in any other case—a driver's licence subsequently issued to
the person will be subject to the conditions until the
aggregate of the periods for which the conditions have
applied in relation to the person equals the required period.
- 20 (2) For the purposes of subsection (1)(a), a driver's licence will only be
taken to be surrendered if the person has surrendered the licence
voluntarily and has not been required to do so under any Act or law.

Schedule 1—Transitional provisions

25 The expiration of an offence prior to the commencement of section 4 of this Act cannot be
taken into account in determining whether an offence to which section 81C of the *Motor
Vehicles Act 1959* applies is a first, second, third or subsequent offence for the purposes of that
section.