

ROAD TRAFFIC (AMENDMENT) ACT, 1993

No. 18



of 1993

ARRANGEMENT OF SECTIONS

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An Act to amend the Road Traffic Act

Date of Assent : 29.12.93.

Date of Commencement : 31.12.93.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Road Traffic (Amendment) Act, 1993.
2. Section 30 of the Road Traffic Act (hereinafter referred to as "the Act") is amended by inserting, immediately after subsection (5) thereof, the following new subsection —

"(6) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be sentenced, for a first offence, to a fine of not less than P300,00 or more than P1 000,00, or to imprisonment for a term of not less than three months or more than 12 months, and, for each subsequent offence, to a fine of not less than P600,00 or more than P2 000,00, or to imprisonment for a term of not less than six months or more than 24 months, or to both."

Short title
Amendment
of section 30
of Cap 69:01

Amendment
of section 36
of the Act

3. Section 36 of the Act is amended by substituting, therefor, the following new section —

“Production
of driving
licence on
demand

36. (1) Every person shall at all times, while driving a motor vehicle on a road, carry his driving licence and shall produce it for examination on being so required by a police officer.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and shall be sentenced to a fine of not less than P50,00 or more than P500,00, or to imprisonment for a term of not less than one month or more than six months, or to both.”

Amendment
of section 42
of the Act

4. Section 42 of the Act is amended by substituting, therefor, the following new section —

“Penalties

42. Any person who contravenes or fails to comply with any of the provisions of this Part for which no specific penalty is prescribed shall be guilty of an offence and shall be liable, for a first offence, to a fine not exceeding P100,00 or to imprisonment for a term not exceeding three months, or to both, and for each subsequent offence, to a fine not exceeding P200,00 or to imprisonment for a term not exceeding six months, or to both.”

Amendment
of section 45
of the Act

5. Section 45 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

“(1) Any person who contravenes or fails to comply with any of the provisions of section 44 shall be guilty of an offence and shall be sentenced to a fine of not less than P30,00 plus P5,00 for every kilometre per hour exceeded, and not more than P1 000,00 or to imprisonment for a term of not more than five years, or to both.”

Amendment
of section 46
of the Act

6. Section 46 of the Act is amended by substituting, for subsections (1) and (2) thereof, the following new subsections —

“(1) A person who, when driving or attempting to drive a motor vehicle, is unfit to drive through drink or drugs, shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000,00 or more than P5 000,00, or to imprisonment for a term of not less than 12 months or more than five years, or to both.

(2) Without prejudice to subsection (1), a person who, when in charge of a motor vehicle, is unfit to drive through drink or drugs shall be guilty of an offence and shall be sentenced to a fine of not less than P500,00 or more than P2 000,00, or to imprisonment for a term of not less than six months or more than five years, or to both:

Provided that a person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drugs.”

7. The Act is amended by inserting, immediately after section 46 thereof, the following new section —

“Power to
require
breath
specimen

46A. (1) A police officer may require any person who is driving or is in charge of a motor vehicle to provide, at any place which that officer may specify, a specimen of breath for analysis by means of a breathalyser of a type prescribed by the Minister.

(2) Where the results of the analysis of the specimen of breath provided in accordance with subsection (1) indicate that the level of alcohol in the breath of the person who provided the specimen is in excess of the amount prescribed as being the amount permissible in a specimen of breath for analysis by means of a breathalyser, the police officer shall require that person to provide, at a place specified by that officer, another specimen of breath for analysis, at that place, by an authorized person.

(3) Where the results of the analysis of the second specimen of breath provided in pursuance of subsection (2) indicate that the level of alcohol in the breath of the person who provided the specimen exceeds the limit prescribed for the level of alcohol in a specimen of breath for analysis by means of an alcometer, those results shall be deemed to be prima facie evidence that that person was unfit to drive through drink or drugs and shall make him liable to a charge for an offence under section 46 or 49 (c).

(4) Where a person is unable, for medical reasons, to provide a specimen of breath under this section, a police officer shall require him to provide a specimen of blood for analysis by an authorized person.

(5) Where any person who has provided a specimen of breath for analysis in pursuance of this section contests the results of that analysis, he may request, and shall be given the opportunity, to provide a specimen of blood by an authorized person.

(6) A person who, without reasonable excuse, fails to provide a specimen of breath or blood when required to do so in pursuance of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P500,00 or more than P1 000,00, or to imprisonment for a term of not less than six months or more than 12 months, or to both.

(7) For the purposes of this section, “authorized person” means a police officer or such other person as the Minister may prescribe.”

8. Section 47 of the Act is amended —

(a) by substituting, for subsections (1), (3), (6), (11) and (12) thereof, the following new subsections —

Insertion of
new section
46A in the
Act

Amendment
of section 47
of the Act

“(1) In any proceedings for an offence under section 46 or for an offence under section 49 (c) in connexion with a motor vehicle, the court shall, subject to subsections (2), (7) and (9), have regard to any evidence which may be given of the proportion or quantity of alcohol or of any drug which was contained in the blood or breath of the accused, as the case may be, as ascertained by analysis of a specimen of blood or breath taken from him by a qualified person, at any material time.

(3) Where, in any proceedings for an offence under section 46 or for an offence under section 49 (c) in connexion with a motor vehicle, it is proved that the accused refused to consent to the taking of a specimen of blood or a specimen of breath for analysis by a qualified person, his refusal shall, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution or as rebutting any evidence given on behalf of the defence.

(6) For the purposes of any proceedings for an offence under section 46 or for an offence under section 49 (c) in connexion with a motor vehicle, a certificate purporting to be signed by an analyst authorized by the Minister for the purposes of this section, and certifying the proportions of alcohol or of any drug found in a specimen of blood or breath as the case may be, identified by the certificate, shall be evidence of the matters so certified and of the qualifications of the analyst and shall be admissible in evidence without any need for the giving of any oral evidence, on the matters so certified, by the person who signed the certificate :

Provided that the accused has, not less than seven days before the hearing or trial, been served with a copy of the certificate.

(11) The Minister may prescribe a limit to the amount of alcohol permissible in a specimen of blood or breath taken from an accused under this Act and where the Minister has prescribed such a limit and the results of analysis show that the amount of alcohol found in any specimen of blood or breath taken from an accused exceeds the permitted amount, the accused shall be deemed at the relevant time to have been unfit to drive through drink or drugs in any proceedings for an offence by him under section 46 or for an offence under section 49 (c) in connexion with a motor vehicle.

(12) In this section, “qualified person” means a police officer, a medical practitioner, intern or houseman, laboratory assistant or registered nurse of or above the rank of Staff Nurse, or such other person as the Minister may prescribe.”; and

(b) by deleting subsection (2) thereof.

9. Section 48 of the Act is amended —

(a) by substituting, for subsection (1) thereof, the following new subsection —

“(1) If a person drives a motor vehicle recklessly or at a speed or in a manner which is dangerous to other persons, having regard to all the circumstances of the case, he shall be guilty of an offence and shall be sentenced to a fine of not less than P500,00 or more than P5 000,00, or to imprisonment for a term of not less than six months or more than five years, or to both.”; and

(b) by inserting, immediately after subsection (1) thereof, the following new subsection —

“(1A) Notwithstanding the provisions of subsection (1), any person who, being the driver of a public service vehicle, drives that vehicle recklessly or at a speed or in a manner which is dangerous to other persons, having regard to all the circumstances of the case, shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000,00 or more than P10 000,00, or to imprisonment for a term of not less than six months or more than eight years, or to both.”

10. Section 49 of the Act is amended by substituting, therefor, the following new section —

“Causing death by reckless driving, etc

49. (1) Any person who causes the death of another person by the driving of a motor vehicle recklessly or in a manner which is dangerous to other persons having regard to all the circumstances of the case shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000,00 or more than P10 000,00, or to imprisonment for a term of not less than five years or more than 10 years, or to both.

(2) Any person who causes the death of another person by the driving or using on a road of a vehicle which is in such condition as to constitute a danger to the public shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000,00 or more than P10 000,00, or to imprisonment for a term of not less than two years or more than 10 years, or to both.

(3) Any person who causes the death of another person by the driving of a vehicle whilst he is unfit to drive through drink or drugs shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000,00 or more than P10 000,00, or to imprisonment for a term of not less than five years or more than 10 years, or to both.

(4) Any person who causes the death of another person by leaving any vehicle on a road in such a position or manner, or in such a condition as to constitute a danger to the public having regard to all the circumstances of the case includ-

Amendment of section 49 of the Act

ing the nature, condition and use of the road, and the amount of traffic and number of animals which are actually, or which are reasonably expected to be on the road at the time, shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000,00 or more than P2 000,00, or to imprisonment for a term of not less than six months or less than one year, or to both."

Amendment
of section 50
of the Act

11. Section 50 of the Act is amended —

(a) by substituting, for subsection (1) thereof, the following new subsection —

"(1) If a person drives a motor vehicle without due care and attention, or without reasonable consideration for other persons, he shall be guilty of an offence and shall be sentenced to a fine of not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both."; and

(b) by inserting, immediately after subsection (1) thereof, the following new subsection —

"(1A) Notwithstanding the provisions of subsection (1), any person who, being the driver of a public service vehicle, drives that vehicle without due care and attention or without reasonable consideration for other persons, shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000,00 or more than P5 000,00, or to imprisonment for a term of not less than 12 months or more than five years, or to both."

Amendment
of section 52
of the Act

12. Section 52 of the Act is amended by substituting, therefor, the following new section —

"Mandatory
disqualifica-
tion

52. (1) Where a person is convicted of manslaughter contrary to section 200 of the Penal Code in connexion with the driving of a motor vehicle, or of an offence under section 49 of this Act, the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than three years or more than five years.

(2) Where a person is convicted of an offence under section 46 (1), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than two years or more than five years.

(3) Where a person is convicted of an offence under section 46 (2), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than one year or more than three years.

(4) Where a person is convicted of an offence under section 48 (1), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than one year or more than two years.

(5) Where a person is convicted of an offence under section 45, 46, 48, 49, or 50 committed within a period of one year from a previous conviction for the same offence, the court convicting him shall disqualify him from driving or from holding or obtaining a driving licence for three months."

13. Section 56 of the Act is amended by inserting, therein, the following new subsection —

Amendment
of section 56
of the Act

"(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both."

14. Section 60 of the Act is amended by inserting, therein, the following new subsection —

Amendment
of section 60
of the Act

"(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P50,00 or more than P500,00, or to imprisonment for a term of not less than one month or more than six months, or to both."

15. Section 84 of the Act is amended by substituting, therefor, the following new section —

Amendment
of section 84
of the Act

Powers of court 84. (1) A court may, for any offence for which it is not obliged to impose mandatory disqualification under section 52 —

(a) disqualify such person from driving, and from holding or obtaining a driving licence for such period as it may determine;

(b) if the person convicted holds a driving licence, suspend such licence until such time as the person passes another driving test under section 39; or

(c) if the person convicted holds a driving licence, cause particulars of the conviction to be endorsed thereon, and forward a notice of the conviction and endorsement to the Registrar.

(2) Any disqualification or suspension imposed under subsection (1) may be limited to the driving of a particular class or description of vehicle.

(3) Where a court suspends a driving licence under subsection (1) (b), a licensing officer shall, on application being made and upon payment of the prescribed fee, issue a provisional driving licence to such holder."

Amendment
of section 92
of the Act

16. Section 92 of the Act is amended by substituting, therefor, the following new section —

“Driving
under the
influence of
drink

92. Any person who when driving or attempting to drive, or when in charge of a vehicle, other than a motor vehicle, on a road or in a public place, is under the influence of drink or drugs to such an extent as to be incapable of having proper control of the vehicle shall be guilty of an offence and shall be sentenced to a fine of not less than P50,00, or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both.”

Amendment
of section 93
of the Act

17. Section 93 of the Act is amended by substituting, therefor, the following new section —

“Reckless
driving

93. Any person who drives any vehicle, other than a motor vehicle, on a road or in a public place, recklessly or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually, or which might reasonably be expected to be on the road, at the time, shall be guilty of an offence and shall be sentenced to a fine of not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both.

Amendment
of section 94
of the Act

18. Section 94 of the Act is amended by substituting, therefor, the following new section —

“Careless
driving

94. Any person who, on a road or in a public place, drives a vehicle other than a motor vehicle, without due care or attention, shall be guilty of an offence and shall be sentenced to a fine of not less than P50,00 or more than P500,00, or to imprisonment for a term of not less than one month or more than six months, or to both.”

Amendment
of section 99
of the Act

19. Section 99 of the Act is amended by substituting, for the paragraph which appears immediately after paragraph (b) thereof, the following new paragraph —

“and any person who contravenes any of the provisions of this subsection shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000,00 or more than P3 000,00, or to imprisonment for a term of not less than six months or more than 12 months, or to both.”

Amendment
of section 101
of the Act

20. Section 101 of the Act is amended by substituting, for the paragraph which appears immediately after paragraph (h) thereof, the following new paragraph —

“shall be guilty of an offence and shall be sentenced to not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both.”

Amendment
of section 105
of the Act

21. Section 109 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

“(1) Any person who drives or acts as the conductor of a public service vehicle without being licensed for that purpose under this Part, and any person who employs or permits any person who is not so licensed shall be guilty of an offence and shall be sentenced to a fine of not less than P300,00 or more than P1 000,00, or to imprisonment for a term of not less than three months or more than 12 months, and, for each subsequent offence, to a fine of not less than P600,00 or more than P2 000,00, or to imprisonment for a term of not less than six months or more than 24 months.”

22. The Act is amended by inserting, immediately after section 130 thereof, the following new section —

“Admission
of guilt
Cap. 08:02

131. Notwithstanding the provisions of section 307 (1) of the Criminal Procedure and Evidence Act, a police officer may accept a fine not exceeding P1 000,00 from any person who, in accordance with the said section, signs a document admitting that he is guilty of an offence under this Act.”

Insertion of
new section
131 in the Act

PASSED by the National Assembly this 16th day of December, 1993.

T.G.G.G. SEELETSO,
Clerk of the National Assembly.