



Tonga

# **TRAFFIC (AMENDMENT) ACT 2010**

**Act No. 31 of 2010**





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# TRAFFIC (AMENDMENT) ACT 2010

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## AN ACT TO AMEND THE TRAFFIC ACT

I assent,  
GEORGE TUPOU V,  
20<sup>th</sup> September 2010.

**BE IT ENACTED** by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

### 1 Short Title

- (1) This Act may be cited as the Traffic (Amendment) Act 2010.
- (2) The Traffic Act (Cap. 156), as amended, shall be referred to in this Act as the Principal Act.

### 2 Interpretation

Section 2 of the Principal Act is amended by inserting the following definitions where appropriate:

“**breath analysing instrument**” means apparatus of a type approved by the Minister for Police by notice in the Gazette for analysis of concentration of alcohol in breath;

“**breath screening test**” means the initial taking of a sample of breath for analysis by a breath analysing instrument to establish the concentration of alcohol present in a person’s breath;

“**evidential breath test**” means taking a second sample of breath for analysis by a breath analysing instrument to establish the concentration of alcohol present in a person’s breath;

“**passive breath testing device**” means a device which is held near a person's mouth for the purpose of ascertaining whether or not there is any alcohol in the person's breath.”.

### **3 Section 22 replaced - Speed limit**

Section 22 of the Principal Act is amended by repealing the section and replacing it with the following:

- “(1) Subject to section 24 of this Act, the speed limit for motor vehicles in the Kingdom shall be designated in speed zones by the Minister for Police.
- (2) The speed zones set under sub-section (1) may have a maximum speed limit of either:
- (a) 30 kilometres per hour;
  - (b) 40 kilometres per hour;
  - (c) 50 kilometres per hour; or
  - (d) 70 kilometres per hour,

and it shall be lawful for the Minister for Police to designate for one speed zone two different speed limits at different times.”.

### **4 Section 25 amended**

Section 25(2)(b) of the Principal Act is repealed.

### **5 New Sections 25A, 25B, 25C, 25D and 25E**

The Principal Act is amended by inserting the following new provisions after section 25:

#### **“25A Breath screening test**

- (1) Any of the following persons may be required by a police officer to undergo a breath screening test using a breath analysing instrument:
- (a) A driver of, or a person attempting to drive, a motor vehicle on any road;

- (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;
  - (c) If an accident has occurred involving a motor vehicle, —
    - (i) The driver of any vehicle involved in the accident; or
    - (ii) If the driver of the motor vehicle at the time of the accident is unable to be ascertained, a person whom the officer has good cause to suspect was in the motor vehicle at the time of the accident; or
  - (d) Any person who is in a hospital or doctor's surgery as a result of an accident involving a motor vehicle provided that the medical practitioner in attendance determines that the taking of the breath screening test would not be prejudicial to the person's health.
- (2) Every person who has been required to undergo a breath screening test under this section shall remain at the place where the person underwent the test until after the result of the test is ascertained, and any person who refuses or fails to remain at that place commits an offence and may be arrested without warrant.
  - (3) Any person who has been required to undergo a breath screening test, may also be required to undergo a test using a passive breath testing device.
  - (4) The use or non use of a passive breath testing device does not in itself affect the validity of the breath screening test.

### **25B Evidential breath test**

- (1) Any person who has undergone a breath screening test under section 25A may be required to accompany a police officer to a place where he will undergo an evidential breath test using a separate breath analysing instrument, if —
  - (a) The person has undergone a breath screening test under section 25A and it appears to the officer that the test indicates that the proportion of alcohol in the person's breath exceeds 150 micrograms of alcohol per litre of breath;
  - (b) The person fails or refuses to undergo a breath screening test without delay after having been required to do so by a police officer under section 25A;
  - (c) The person could be required to undergo a breath screening test without delay under section 25A but cannot be tested because either a breath screening test 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 alcoholic drink.

- (2) A person who is in a hospital or doctor's surgery as a result of an accident involving a motor vehicle may be required to undergo a second breath screening test provided that the medical practitioner in attendance determines that the taking of the evidential breath test would not be prejudicial to the person's health.

**25C Refusal to take breath screening or evidential breath test**

Any person who, without lawful justification, refuses to undergo a breath screening test or an evidential breath test under this Act, commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000, or to a term of imprisonment not exceeding 3 years, or to both.

**25D Defence for taking breath and evidential screening test**

It is a defence to proceedings for an offence against sections 25A and 25B if the Court is satisfied on the evidence of a medical practitioner, that the taking of the breath screening or evidential breath test would have been prejudicial to the health of the accused.

**25E Notice of Breath analysing instrument**

The Minister for Police shall declare by notice in the Gazette the breath analysing instrument to be used for taking breath screening and evidential breath tests under this Act.”.

**6 Section 26 replaced – Charge of motor vehicle while under influence of drink**

Section 26 of the Principal Act is repealed and replaced with the following:

**“26 Charge of motor vehicle while under influence of drink**

- (1) Any person who is in charge of a motor vehicle on any road, and after being subjected to a breath screening and evidential breath test under this Act, and the lowest result of such tests is equivalent to or more than 150 micrograms of alcohol per litre of breath, commits an offence.
- (2) Any person who commits an offence under sub-section (1), and the lowest result of either the breath screening or evidential breath test result is:

- (a) between 150 micrograms and 250 micrograms of alcohol per litre of breath, shall be issued a Notice of Infringement in the form set out in Form 1 of the Schedule, and shall pay a fine of \$200 within 21 days; or
  - (b) in excess of 250 micrograms of alcohol per litre, shall be prosecuted, and if convicted, shall be liable to be imprisoned for a period not exceeding 2 years or a fine not exceeding \$5,000, or both.
- (3) Subject to sub-section (4), in addition to any penalty given under sub-section (2)(b), the Court may also order that the accused person be disqualified from holding or obtaining a driver's licence for a period not exceeding 2 years.
- (4) Any person who is convicted for the third time for an offence under sub-section (1), shall be liable to be imprisoned for a period not exceeding 3 years or a fine not exceeding \$10,000, or both, and in addition to such penalty, the Court shall order that such person shall be permanently disqualified from holding or obtaining a licence to drive any motor vehicle.
- (5) (a) A driver issued with a Notice of Infringement under sub-section (2)(a) may —
- (i) pay the prescribed fine to the Magistrate's Court; or
  - (ii) contest the notice.
- (b) Where the driver wishes to contest the notice a summons will be issued.
- (6) The police officer who issues a Notice of Infringement under sub-section (2)(a) shall lodge the duplicate notice within 48 hours with the clerk of the Magistrate's Court for the district.
- (7) The clerk of the Magistrate's Court shall —
- (a) where the fine is tendered by the driver, receive the payment, issue a receipt and file the notice;
  - (b) where no payment is tendered within 21 days of the date of issue of the notice, issue a summons to the driver together with a copy of the Notice of Infringement.”.

## **7 New section 26A – Causing bodily injury or death while driving under influence of alcohol**

The Principal Act is amended by inserting the following new provision after section 26:

- “(1) Any person who drives a motor vehicle and causes bodily injury or death of a person while the proportion of alcohol in such person, as

ascertained by breath test subsequently undergone by that person under section 25B, exceeds 250 micrograms of alcohol per litre of breath, commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 15 years.

- (2) In addition to any penalty imposed under sub-section (1), the Court may also order that the convicted person be disqualified from holding or obtaining a driver's licence for a period not exceeding 3 years."

## **8 New Section 27A – Loud Noise from Vehicles**

The Principal Act is amended by inserting the following new provision after section 27:

- “(1) For the purposes of this section, “loud noise” means any sound or vibrations from any mechanism of a vehicle used to generate sound, such as voice, songs and other similar matters, which is heard by any person who is not in the vehicle making such sounds or vibrations, and such sound or vibration is at a level that is unreasonable or unjustified.
- (2) Any person who drives a vehicle on any road, and such vehicle generates loud noise without authority under any enactment, such person commits an offence and shall be liable upon conviction to pay a fine of \$100 for the first offence, in default of paying such fine, be imprisoned for a period not exceeding one month, and for any subsequent offence, pay a fine of \$200 for each subsequent offence, or be imprisoned for a period not exceeding 3 months.”.

## **9 Section 28A amended**

Section 28A of the Principal Act is amended by deleting the words “provided in” and replacing them with “set out in form 2 of”.

## **10 Schedule Amended**

The Schedule of the Act is amended by inserting the following as Form 1, and numbering the existing form as Form 2, as follows:

**“FORM 1**

**Notice of Infringement of Driving Under Influence of Alcohol**

**(Section 26)**

Date:.....

To..... of ..... Licence No. ....  
(name) (address)

You have been detected to be in charge of the motor vehicle Registered Number ....., whilst having in you ..... micrograms of alcohol per litre of breath.

In accordance with section 26(2)(a) you have committed an offence, and are hereby required to pay a fine of \$200 within 21 days.

You may sign the declaration below and take this notice together with the sum of \$200 to pay the fine only to the Clerk of the Magistrate’s Court at ..... district within 21 days of today's date;

**OR**

If you wish to contest this fine, a summons will be issued to you after 21 days and you will be required to attend a court and appear before a Magistrate.

**DECLARATION:**

I, (insert your name)..... understand that under clause 10 of the Constitution of Tonga I have a right to have this matter dealt with by a court. However instead of appearing in court I wish to pay the fine as set out in this notice.

I tender this Declaration and the fine of \$200 as required by this Notice of Infringement.

Signed..... Dated.....”.

Passed by the Legislative Assembly on this 2<sup>nd</sup> day of September 2010.