

# THE OFFICIAL GAZETTE 11<sup>TH</sup> JULY, 2008

## LEGAL SUPPLEMENT – C

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**BILL No. 8 of 2008**

*Friday 11<sup>th</sup> July, 2008*

PARLIAMENT OFFICE  
Public Buildings,  
Georgetown,  
Guyana.

11<sup>th</sup> July, 2008.

The following Bill which will be introduced in the National Assembly is published for general information.

*S. E. Isaacs,*  
Clerk of the National Assembly.



**GUYANA**

**BILL No. 8 OF 2008**

**THE EVIDENCE AND MOTOR VEHICLES AND ROAD TRAFFIC  
(AMENDMENT) BILL 2008**

**ARRANGEMENT OF SECTIONS**

**SECTION**

**PART 1  
PRELIMINARY**

1. Short title and commencement.

**PART II**  
**AMENDMENT OF THE EVIDENCE ACT**

2. Amendment of the Evidence Act.

**PART III**  
**AMENDMENT OF THE MOTOR VEHICLES AND ROAD TRAFFIC ACT**

3. Insertion of new sections 39A, 39B, 39C, 39D, 39E, 39F and 39G in the Motor Vehicles and Road Traffic Act.
4. Amendment of section 103 of the Motor Vehicles and Road Traffic Act.

**A BILL**  
**Intituled**

AN ACT to amend the Evidence Act and the Motor Vehicles and Road Traffic Act.

A.D. 2008

Enacted by the Parliament of Guyana:-

**PART-I**  
**PRELIMINARY**

Short title and  
commencement.  
Cap.5:03.  
Cap.51:02.

1. This Act which amends the Evidence Act and the Motor Vehicles and Road Traffic Act may be cited as the Evidence and Motor Vehicles and Road Traffic (Amendment) Act 2008 and shall come into operation on such date as the Minister may by order appoint.

**PART II**  
**AMENDMENT OF THE EVIDENCE ACT**

Amendment of  
the Evidence  
Act.  
Cap.5:03.

2. The Evidence Act is amended in the following respects -

(a) by the insertion in section 2 in the proper alphabetical order the following definition-

Cap.51:02 “authorised analyst” means a person designated as such by the Minister responsible for the Motor Vehicles and Road Traffic Act for the purpose of that Act;

(b) by the insertion after section 43 of the following sections as sections 43A and 43B -

“Report  
of authorised  
analyst  
received as  
evidence.  
Cap. 51:02.

43.A (1) For the purposes of any proceedings for an offence under section 39 or 39 A of the Motor Vehicles and Road Traffic Act, a certificate signed by an authorised analyst, certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to section 39 F (3) of that Act, be evidence of the matters so certified and of the qualifications of the analyst.

- (2) For the purposes of any proceedings for an offence under section 39 or 39 A of the Motor Vehicles and Road Traffic Act, a certificate purporting to be signed by a registered medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to section 39 F (3) of that Act, be evidence of the matters so certified and of the qualifications of the registered medical practitioner.

Certification  
of accuracy  
of speedometers,  
radar and  
weighing devices.

43B. (1) A document purporting -

- (a) to be a record of the testing of the accuracy, inspection and servicing of -
- (i) the speedometer of the motor vehicle specified in the document;
  - (ii) a radar device or apparatus specified in the document designed and used for the purpose of ascertaining the speed of motor vehicle; or
  - (iii) a weighing device or apparatus specified in the document designed and used for the purpose of ascertaining the laden or unladen weight of a motor vehicle; and
- (b) to be certified -
- (i) in the case of the speedometer, by a person authorised in this behalf by the Licensing Authority;
  - (ii) in the case of radar device or apparatus designed and used for the purpose of ascertaining the speed of a motor vehicle, by a person authorised in this behalf by the Commissioner of Police;
  - (iii) in the case of a weighing device or apparatus designed and used for purpose of ascertaining the laden or unladen

weight of a motor vehicle, by a person authorised in this behalf by the Licensing Authority, shall be admitted in any criminal or civil proceedings before any court on its production without further proof.

- (2) On the production of a document under subsection (1) —
- (a) the court before which it is produced shall, until the contrary is proved, presume —
- (i) that it was signed at the time and place specified therein by a person authorised by the appropriate public officer specified in the document;
- (ii) that the facts stated in the document relating to the testing of the accuracy, inspection and servicing of the speedometer of the vehicle specified therein or the radar, weighing device or apparatus specified therein are true; and
- (iii) that the record of the facts stated in the document was made and compiled at the time stated herein; and
- (b) the document shall be *prima facie* evidence of all matters connected therein.
- (3) In this section —
- “Licensing Authority” means the Licensing Authority established under the Motor Vehicles and Road Traffic Act.”.

**PART 111**  
**AMENDMENT OF THE MOTOR VEHICLES AND ROAD TRAFFIC ACT**

Insertion  
of new  
sections 39A  
39B, 39C,  
39D, 39E,  
39F and 39G  
in the Motor  
Vehicles and  
Road Traffic  
Act,  
Cap. 51:02.

3. The Motor Vehicles and Road Traffic Act is amended by inserting immediately after section 39 the following as sections 39A, 39B, 39C, 39D, 39E, 39F and 39G-

“Driving or  
being in charge  
of vehicle  
while breath or  
blood alcohol  
levels exceed  
prescribed  
limit.

39A (1) A person shall not drive or attempt to drive or be in charge of a motor vehicle on a road or other public place if he has consumed alcohol in such a quantity that the proportion thereof in his breath or blood exceeds the prescribed limit.

(2) Any person who contravenes subsection (1) shall be liable on summary conviction to a fine of seven thousand five hundred dollars.

(3) A person convicted of-

(a) two consecutive offences under this section shall unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction from holding or obtaining a licence; and

(b) a third conviction for a like offence, shall be permanently disqualified from holding or obtaining a licence.

(4) No person shall be convicted under this section of being in charge of a motor vehicle as mentioned in subsection (1) if he proves that at

the material time the circumstances were such that there was no likelihood of his driving the motor vehicle while there was alcohol in his breath or blood in a proportion exceeding the prescribed limit.

Breath test.

39 B. (1) Where a constable in uniform or on showing his authority as a member of the Police Force has reasonable cause to suspect

- (a) that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has an alcohol level in his breath exceeding the prescribed limit or is in breach of section 39;
- (b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with an alcohol level in his breath exceeding the prescribed limit and that the person still has alcohol in his breath; or
- (c) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed an offence against this Act whilst the vehicle was in motion,

he may, subject to subsection (4), require him to provide a specimen of breath for a breath test at or near the place where the requirement is made.

(2) No requirement may be made by virtue of paragraph (b) or (c) of subsection (1) unless it is made as soon as reasonably practicable after the commission of the offence.

(3) If an accident occurs owing to the presence of a motor vehicle on a road, a constable in uniform on showing his authority as a member of the Police Force may, subject to subsection (4), require any person whom he has reasonable cause to believe was driving or attempting to drive (hereinafter in this section referred to as the driver) the vehicle at the time of the accident, to

provide a specimen of breath for a breath test either at or near the place where the requirement is made or, if the constable thinks fit, at a police station specified by him being a police station in reasonable proximity to that place.

(4) If a driver is at a hospital as a patient, he may be required by the constable to give a specimen of breath at the hospital but no such requirement may be made unless the registered medical practitioner in charge of his case -

- (a) is given prior notice of the proposal to make the requirement; and
- (b) does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(5) A driver who, without reasonable excuse, fails to provide a specimen of breath under subsection (1), (3), (4) or (8) commits an offence and is liable on summary conviction to a fine of not less than twenty thousand dollars nor more than thirty thousand dollars or in default of payment, to imprisonment for a term not less than three months nor more than six months.

(6) A constable may arrest without warrant any person who, as a consequence of a breath test, is found to have a proportion of alcohol in his breath exceeding the prescribed limit but no such arrest may be made while the person is at a hospital as a patient.

(7) If a person required by a constable under subsection (1), (3), (4) or (8) to provide a specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect that the person has alcohol in his breath or blood above the prescribed limit the constable may arrest the person without warrant but no such arrest



may be made if the person is at a hospital as a patient.

- (8) A person arrested under this section or under section 39 shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test at the police station.

Breath analysis.

39 C. (1) Subject to subsections (2) and (3) where -

- (a) any person required by a constable under section 39 B to undergo a breath test fails to undergo that test; or
- (b) in consequence of a breath test carried out under section 39 B, it is indicated that there may be present in that person's breath a concentration of alcohol in excess of the prescribed limit, the constable may require that person to submit, in accordance with the directions of the constable, to a breath analysis.

(2) The breath analysis referred to in subsection (1) shall be carried out by a constable authorised in that behalf by the Minister-

- (a) at or near the place where the requirement is made if facilities for the specimens to be taken are available and it is practicable to conduct the analysis there; or

(b) at a police station,

as the constable may direct.

(3) For the purpose of the breath analysis-

- (a) a person shall provide two separate specimens of breath for analysis;

- (b) such specimens shall be provided in accordance with the directions of the constable referred to in subsection (2);
- (c) there must be an interval of not less than two minutes and not more than ten minutes between the provision of specimens:  
and
- (d) the reading from the specimen that indicates the lower concentration of alcohol in the person's breath shall be taken to be the result of the breath analysis.

(4) A member of the Police Force shall not require any 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 and the registered medical practitioner in immediate charge of his treatment has not been notified of the intention to make the requisition or objects on the ground that compliance therewith would be prejudicial to the proper care or treatment of that person;
- (b) if it appears to that member 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; or
- (c) ~~at that person's usual place of abode:~~

Provided that a person may be required to submit to a breath test at that person's usual place of abode-

- (a) if the member has reasonable cause to believe that -
  - (i) the person was involved in an accident on a road or other public place within the preceding two hours resulting in death or serious injury; and

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- (ii) at the time when the accident occurred the person had an alcohol level in his breath exceeding the prescribed limit; and
- (b) it was not feasible for a constable to require the person to submit to a breath test at the scene of the accident.
- (5) Any person who—
  - (a) upon being required under subsection (1) to submit to a breath analysis fails to do so in accordance with the directions of a member of the Police Force; or
  - (b) wilfully does anything to alter the concentration of alcohol in his breath or blood between the time of the event referred to in section 39 B (in respect of which he is required to undergo a breath test) and the time when he undergoes that test or, if he is required to submit to a breath analysis, the time when he submits to that analysis,

commits an offence and is liable on summary conviction—

- (c) in the case of a first conviction, to a fine of not less than thirty thousand dollars nor more than fifty thousand dollars or in default of payment thereof to imprisonment for a term not less than three months nor more than six months ; and
- (d) in case of a second or subsequent conviction to a fine of not less than forty thousand dollars nor more than sixty thousand dollars or in default of payment thereof to imprisonment for a term not less than six months nor more than twelve months.

(6) It shall be a defence to a prosecution for an offence under subsection (5) (a) if the defendant satisfies the court that he was unable on medical grounds at the time he was required to do so to undergo a breath test or to submit

to a breath analysis, as the case may be,

(7) As soon as practicable after a person has submitted to a breath analysis, the member of the Police Force operating the breath analysing instrument shall deliver to that person a statement in writing signed by that member specifying-

- (a) 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
- (b) the time of day and the day on which the breath analysis was completed.

(8) In proceedings for an offence under section 39, 39A or 39B -

- (a) evidence may be given of the concentration of alcohol present in the breath of the accused as determined by the breath analysing instrument operated by the member of the Police Force authorised in that behalf under section 39 C (2); and
- (b) the concentration of alcohol so determined shall be deemed to be the concentration of alcohol in the breath of the accused at the time of the occurrence of the event mentioned in section 39 B;
- (c) unless the accused proves that the concentration of alcohol in his breath at that time did not exceed the prescribed limit.

(9) In proceedings for an offence under section 39B, a certificate purporting to be signed by a member of the Police Force certifying that -

- (a) he is authorised by the Minister to operate breath analysing instruments;
- (b) the person named therein submitted to a breath analysis;
- (c) the apparatus used by him to make the breath analysis was a breath analysing instrument approved by the Minister;
- (d) the analysis was made on the day and completed at the time

stated in the certificate:

- (e) a 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 certificate; and
- (f) a statement in writing required by subsection (7) was delivered in accordance with that subsection, shall be *prima facie* evidence of the particulars certified in and by the certificate

(10) In proceedings for an offence under this section a certificate purporting to be signed by the Minister that the member of the Police Force named therein is authorised by the Minister to operate breath analysing instruments shall be *prima facie* evidence of the particulars certified in and by the certificate

(11) In any proceedings for an offence under this section, evidence of the condition of a breath analysing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

Laboratory  
tests

39 D (1) Subject to subsections (2) and (3), in the course of an investigation as to whether a person has committed an offence under section 39 or 39 A, a constable may require a person under investigation to provide a specimen of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a specimen of breath for a breath test.

(2) A person shall not be required to provide a specimen of blood for a laboratory test under subsection (1) if he is at a hospital as a patient

and the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that the requirement to provide such specimen could be prejudicial to the proper care or treatment of that person.

(3) A constable shall not require a person to submit a specimen of blood for a blood analysis if a breath analysis has been carried out in respect of that person and the result is available.

(4) Nothing in the foregoing provisions of this section shall affect the provisions of section 39 F.

(5) For the purposes of this section and sections 39A, 39 E and 39 F, where any person is required to provide a specimen of blood, such specimen shall be taken only -

- (a) with the consent of that person;
- (b) at a hospital; and
- (c) by a registered medical practitioner or qualified laboratory technician.

Refusal to consent to taking of or providing of specimen.

39 E. (1) Where any person who is under investigation in relation to an offence under section 39A refuses to provide a specimen of blood for a blood test when required to do so under section 39 D (1), his refusal may, 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, with respect to his condition at the time when the offence was committed.

(2) For the purposes of subsection (1), a person shall not be treated as failing to provide a specimen unless he is first requested to provide a specimen but refuses to do so.

Ancillary provisions as to evidence in proceedings for an offence under section 39A.

39 F (1) For the purposes of any proceedings for an offence under section 39 A, a certificate signed by an authorised analyst, certifying the proportion of alcohol found in a specimen identified by the certificate shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the analyst.

(2) For the purposes of any proceedings for an offence under section 39 A, a certificate purporting to be signed by the registered medical practitioner that he took a specimen of blood from a person with that person's consent shall, subject to subsection (3), be evidence of the matters so certified and of the qualifications of the registered medical practitioner.

(3) Subsections (1) and (2) shall not apply to a certificate tendered on behalf of the prosecution –

- (a) unless a copy has been served personally on the accused or his counsel or by prepaid registered post not less than seven days before the hearing or trial; or
- (b) if the accused, not less than seven days before the hearing or trial, or within such further time as the court may in the circumstances of the case allow, has served notice on the prosecution requiring the attendance at the hearing or trial of the person by whom the certificate was signed.

(4) Where, in proceedings for an offence under section 39 A the accused, at the time a specimen of blood was taken from or provided by him in accordance with this Act, asked to be supplied with such a specimen, evidence of the proportion of alcohol found in the specimen shall not be admissible on behalf of the prosecution unless-

- (a) the specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided; and

(b) the other specimen or part was supplied to the accused.

Interpretation of  
sections  
39 A to 39 F.

39 G (1) In sections 39 A to 39 F, unless the context otherwise  
requires-

“authorised analyst” means a person designated as such by the  
Minister for the purposes of this Act;

“breath analysis” means the quantitative measuring of the proportion of  
alcohol in a person’s breath carried out by means of a device  
approved for the purpose by the Minister;

“breath test” means a test for the purpose of obtaining an indication of  
the proportion of alcohol in the person’s breath carried out by  
means of a device of a type approved for the purpose of such a  
test by the Minister, on a specimen of breath provided by such  
person;

“constable” means a member of the Guyana Police Force;

“fail”, in relation to providing a specimen, includes refuse;

“hospital” mean an institution which provides medical or surgical  
treatment for in-patients or out- patients and includes any  
place recognised by the Minister responsible for health as a  
place where laboratory tests are carried out;

“laboratory test” means the analysis of a specimen provided for the  
purpose;

“Police Force” means the Guyana Police Force;

“the prescribed limit” means, in respect of -

(a) breath alcohol concentration, 35 microgrammes of  
alcohol in 100 millilitres of breath; and

(b) blood alcohol concentration, 80 milligrammes of alcohol in



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100 millilitres of blood,

or such other proportion as may be prescribed.

(2) References in section 39 B to providing a specimen of breath shall be construed as references to providing a specimen thereof in sufficient quantity to enable a breath test to be carried out."

4. Section 103(1) of the Motor Vehicles and Road Traffic Act is amended by the insertion immediately after paragraph (v) of the following paragraph as paragraph (vA) --

"(vA) the procedure for assignment of points on conviction for certain offences known as the demerit points system;"

Amendment of  
section 103 of  
the Motor  
Vehicles and  
Road Traffic  
Act.  
Cap 51:02

## EXPLANATORY MEMORANDUM

Clause 2 of the Bill seeks to amend the Evidence Act, Cap. 5:03, by the insertion of new Sections 43A and 43B. This clause inserts a definition of an authorised analyst in the Evidence Act as being a person designated by the Minister responsible for Home Affairs. Section 43A provides for a certificate signed by an authorised analyst or a certificate signed by a registered medical practitioner to be received in any Court as evidence of any matter or thing contained therein relating to the examination or analysis of a breath or blood test.

The new Section 43B provides for the certification of the accuracy of speedometers, radar and weighing devices by the appropriate public officer specified in the document. A document which certifies the accuracy of a speedometer, radar or weighing device may then be produced before the Court. The document shall be *prima facie* evidence of all matters contained therein.

Clause 3 of the Bill seeks to amend the Motor Vehicles and Road Traffic Act, Cap. 51:02, to make provision for the authorisation of any member of the Police Force to operate a breath analysing device or instrument on a driver of a motor vehicle if he is suspected of having consumed alcohol in such a quantity that the proportion in his breath or blood exceeds the prescribed limit.

The new Section 39A seeks to create an offence for any person who drives or attempts to drive or be in charge of a motor vehicle if he has consumed alcohol in such a quantity that the proportion in his breath or blood exceeds the prescribed limit.

The new Sections 39B and 39C make provisions for the carrying out of a breath test and breath analysis, respectively. There are circumstances where a driver is at a hospital as a patient and may only give a specimen of breath after certain conditions are met. A member of the Police Force shall not require any person to undergo a breath test or to submit to a breath analysis if that person has been admitted to hospital for medical treatment and the registered medical practitioner in immediate charge of his treatment has been notified or objects on the ground that compliance therewith would be prejudicial to the proper care or treatment of that person or if it appears by reason of injuries sustained by that person, be dangerous to that person's medical condition or at that person's usual place of abode.

The new Section 39D provides that in the course of an investigation as to whether a person has committed an offence of driving under the influence of drink or drugs or the offence of driving while his breath or blood alcohol levels exceed the prescribed limit a constable may require a person under investigation to provide a sample of blood for a laboratory test if the person is unable, by reason of his physical condition, to provide a sample of breath for a breath test. However where any person is required to provide a specimen of blood, such specimen shall be taken only with the consent of the person, at a hospital and by a registered medical practitioner or qualified laboratory technician.

The new Sections 39E and 39F contain provisions that are incidental in nature.

Clause 4 of the Bill seeks to amend Section 103 of the Motor Vehicles and Road Traffic Act by inserting a new paragraph to empower the Minister to make regulations to provide for the procedure for assignment of points on the conviction of persons for certain traffic offences known as the demerit points system.

A handwritten signature in black ink, consisting of several fluid, connected strokes, positioned above the printed name of the Minister of Home Affairs.

**Minister of Home Affairs.**