

THE ROAD TRAFFIC (AMENDMENT NO. 2) BILL
(No. XXIV of 2016)

Explanatory Memorandum

The main object of this Bill is to amend the Road Traffic Act so as to –

- (a) increase the penalties for certain serious offences; and
- (b) empower a Magistrate to immediately order a person to be disqualified from driving a motor vehicle for a period not exceeding 2 months or from holding or obtaining a licence in Mauritius for a period not exceeding 6 months where that person is found to be driving a motor vehicle with alcohol concentration exceeding the prescribed limit.

N. BODHA, G.C.S.K.

*Minister of Public Infrastructure and
Land Transport*

18 November 2016

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ARRANGEMENT OF CLAUSES

Clause

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| 2. Interpretation | 8. New section 123LA inserted in principal Act |
| 3. New section 51A inserted in principal Act | 9. Section 140 of principal Act amended |
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A BILL

To amend the Road Traffic Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Road Traffic (Amendment No. 2) Act 2016.

2. Interpretation

In this Act –

“principal Act” means the Road Traffic Act.

3. New section 51A inserted in principal Act

The principal Act is amended by inserting, after section 51, the following new section –

51A. Credit for disqualification

A Court before which a person is convicted of an offence under this Act shall –

- (a) in determining the period for which the person is to be disqualified from driving a motor vehicle, give credit to the person for the period during which he was disqualified from driving a motor vehicle pursuant to section 123LA(4)(a); and
- (b) indicate in its judgment that such credit has been given to the person.

4. Section 123B of principal Act amended

Section 123B of the principal Act is amended –

- (a) in subsection (1), by deleting the words “3 years” and replacing them by the words “5 years”;
- (b) by inserting, after subsection (1), the following new subsection –

(1A) In the case of a second or subsequent conviction, the offender under subsection (1) shall be liable to a fine of not less than

75,000 rupees nor more than 100,000 rupees and to imprisonment for a term of not less than 12 months nor more than 8 years.

5. Section 123D of principal Act amended

Section 123D of the principal Act is amended –

- (a) in subsection (1), by deleting the words “3 years” and replacing them by the words “5 years”;
- (b) by inserting, after subsection (1), the following new subsection –

(1A) In the case of a second or subsequent conviction, the offender under subsection (1) shall be liable to a fine of not less than 75,000 rupees nor more than 100,000 rupees and to imprisonment for a term of not less than 12 months nor more than 8 years.

6. Section 123G of principal Act amended

Section 123G of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) Subject to section 123K, a police officer in uniform may require a person to provide a specimen of his breath for a breath test, either at or near the place where the requirement is made or at the nearest police station where the test may be carried out, where the officer has reasonable cause to believe that the person is –

- (a) riding a cycle on a road or any other public place;
- (b) driving a motor vehicle on a road or any other public place;
- (c) subject to section 123E(3), in charge of a motor vehicle on a road or any other public place;
- (d) occupying the driving seat of a motor vehicle on a road or any other public place and attempting to put the motor vehicle in motion;
- (e) occupying the front seat in a motor vehicle as a competent driver supervising a learner driver who is driving the motor vehicle on a road or any other public place; or

(f) on a road or any other public place, driving or attempting to drive a motor vehicle which is involved in a road accident.

(b) in subsection (2) –

(i) by repealing paragraph (a) and replacing it by the following paragraph –

(a) (i) A person who, without reasonable excuse, fails to provide a specimen of his breath for a breath test following a requirement under subsection (1)(a), shall commit an offence and shall, on conviction, be liable to a fine of not less than 5,000 rupees nor more than 25,000 rupees.

(ii) A person who, without reasonable excuse, fails to provide a specimen of his breath for a breath test following a requirement under subsection (1)(b) to (f), shall commit an offence and shall, on conviction, be liable to a fine of not less than 20,000 rupees nor more than 25,000 rupees.

(ii) in paragraph (b), by deleting the figure “5,000” and replacing it by the figure “25,000”.

7. Section 123L of principal Act amended

Section 123L of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) A person required to provide a specimen of breath shall, upon the breath test showing alcohol in excess of the prescribed limit, or upon a refusal to submit to such a test, be detained at a police station until it appears to the police officer that, were that person then driving or attempting to drive a motor vehicle on a road or other public place, he would not be committing an offence under section 123D, 123E or 123F.

(b) by repealing subsection (2).

8. New section 123LA inserted in principal Act

The principal Act is amended by inserting, after section 123L, the following new section –

123LA. Order made against persons under the influence of intoxicating drinks or drugs

- (1) Where a person –
- (a) is reasonably suspected by the Police of having committed an offence under section 123D, 123E or 123F; or
 - (b) fails, without reasonable excuse, to provide a specimen of his breath for a breath test or specimens of breath for analysis, or a specimen of blood or urine, or both, for a laboratory test when required to do so pursuant to section 123G or 123H,

a police officer shall, at the earliest opportunity, make an application to a Magistrate, in such form as may be prescribed, for an order under subsection (4).

(2) The Magistrate shall, on an application made under subsection (1), issue a summons to that person to attend Court and show cause why an order under subsection (4) shall not be made.

- (3) The Magistrate shall –
- (a) where a test carried out pursuant to section 123G or 123H on a person referred to in subsection (1)(a) shows that –
 - (i) the proportion of alcohol in 100 millilitres of his breath is 46 microgrammes or more;
 - (ii) the proportion of alcohol in 100 millilitres of his blood is 100 milligrammes or more; or
 - (iii) the proportion of alcohol in 100 millilitres of his urine is 134 milligrammes or more; or
 - (b) in the case of a person referred to in subsection (1)(b),

after hearing the person, make, unless he thinks fit to do otherwise, an order referred to in subsection (4).

- (4) Where the person referred to in subsection (1) –

- (a) holds a driving licence, a provisional driving licence or an international driving permit, the Magistrate shall, unless he thinks fit to do otherwise, order that the person be disqualified from driving a motor vehicle for a period not exceeding 2 months from the date of the order;
- (b) does not hold a driving licence, a provisional driving licence or an international driving permit, the Magistrate shall, unless he thinks fit to do otherwise, order that the person be disqualified from holding or obtaining a licence in Mauritius for a period not exceeding 6 months from the date of the order.

(5) (a) Where a person is disqualified from driving a motor vehicle under subsection (4)(a), the Magistrate shall order that person to surrender his driving licence, provisional driving licence or international driving permit, as the case may be, to the Court within 5 days of the date of the order.

(b) Any person who fails to surrender his licence or permit within the period specified in paragraph (a) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

(6) An appeal from the order of the Magistrate made under subsection (4) shall not operate as a stay of execution of that order.

9. Section 140 of principal Act amended

Section 140 of the principal Act is amended, in subsection (1)(d), by deleting the words "4 hours" and replacing them by the words "one hour".

10. Various sections of principal Act amended

The principal Act is amended, in the sections specified in the first column of the First Schedule, by deleting the words specified in the second column of that Schedule and replacing them by the corresponding words specified in the third column of that Schedule.

11. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended by deleting the items pertaining to sections 123A, 123B, 123C, 123D, 123E and 123F and their corresponding entries and replacing them by the items pertaining to those sections and their corresponding entries, respectively, as set out in the Second Schedule to this Act.

12. Consequential amendment

The Road Traffic (Prescribed Devices) Regulations 2010 are amended, in regulation 4, by revoking paragraph (a) and replacing it by the following paragraph –

- (a) sections 123D, 123E, 123F, 123G, 123H, 123L, 123LA, 123AD, 124 and 166 of the Act;

13. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE

[Section 10]

SECTION	WORDS TO BE DELETED	WORDS TO REPLACE
123A(1)(a)	not less than 5,000 rupees nor more than 10,000 rupees	not less than 10,000 rupees nor more than 20,000 rupees
123A(1)(b)	not less than 10,000 rupees nor more than 20,000 rupees	not less than 25,000 rupees nor more than 50,000 rupees
123C(1)	not less than 3,000 rupees nor more than 10,000 rupees and to imprisonment for a term not exceeding 3 months	not less than 5,000 rupees nor more than 15,000 rupees and to imprisonment for a term not exceeding 6 months
123C(2)	not less than 5,000 rupees nor more than 20,000 rupees	not less than 10,000 rupees nor more than 20,000 rupees
123E(1)	not less than 10,000 rupees nor more than 25,000 rupees and to imprisonment for a term not exceeding 6 months	not less than 20,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 5 years
123E(2)	not less than 20,000 rupees nor more than 50,000 rupees together with imprisonment for a term of not less than 6 months nor more than 12 months	not less than 50,000 rupees nor more than 75,000 rupees together with imprisonment for a term of not less than 12 months and not exceeding 8 years
123F(3)	not less than 10,000 rupees nor more than 25,000 rupees and to imprisonment for a term not exceeding 6 months	not less than 20,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 5 years

123F(4) not less than 20,000 rupees nor more than 50,000 rupees together with imprisonment for a term of not less than 6 months nor more than 12 months not less than 50,000 rupees nor more than 75,000 rupees together with imprisonment for a term of not less than 12 months and not exceeding 8 years

140(5) 6 months 3 years

SECOND SCHEDULE

[Section 11]

123A	Dangerous driving	First	No	Yes	No	Yes	Yes*	Yes	*If offender is disqualified Minimum disqualification period of 6 months
		Second or subsequent	Yes	No	Yes	No	Yes	No	Minimum disqualification period of 12 months
123B	Causing death by dangerous driving	First	Yes	No	Yes	No	Yes	No	Minimum disqualification period of 2 years
		Second or subsequent	Yes	No	Yes	No	Yes	No	Minimum disqualification period of 5 years
123C	Careless or inconsiderate driving	First	No	No	No	Yes	Yes*	No	*If offender is disqualified
		Second Third or subsequent	No Yes	Yes No	Yes Yes	No No	Yes Yes	No No	Minimum disqualification period of 6 months
123D	Causing death by careless driving when under the influence of intoxicating drink or drug	First	Yes	No	Yes	No	Yes	No	Minimum disqualification period of 3 years
		Second or subsequent	Yes	No	Yes	No	Yes	No	Minimum disqualification period of 5 years

123E	Driving or being in charge of motor vehicle when under influence of intoxicating drink or drug	First	No	Yes	Yes	No	Yes	No	Minimum disqualification period of 12 months
		Second or subsequent	Yes	No	Yes	No	Yes	No	Minimum disqualification period of 24 months
123F	Driving or being in charge of motor vehicle with alcohol concentration above prescribed limits	First	No	Yes	Yes	No	Yes	No	Minimum disqualification period of 12 months
		Second or subsequent	Yes	No	Yes	No	Yes	No	Minimum disqualification period of 24 months
