The Official Gazette

(EXTRAORDINARY)

OF GUYANA

Published by the Authority of the Government

GEORGETOWN, FRIDAY 29TH JULY, 2022

TABLE OF CONTENTS **PAGE**

FIRST SUPPLEMENT

LEGAL SUPPLEMENT

A. **ACTS — NIL**

B. **SUBSIDIARY LEGISLATION — NIL**

C. **BILLS —** BILL No. 19 of 2022 – The Motor Vehicles and Road Traffic (Amendment)Act 2022. … … … 419

GEORGETOWN, Demerara – Printed and Published every Saturday and on such Extraordinary Days as may be directed by the Government by Guyana National Printers Limited, 1 Public Road, La Penitence, Greater Georgetown.

FRIDAY 29TH JULY, 2022

THE OFFICIAL GAZETTE 29TH JULY, 2022
LEGAL SUPPLEMENT — C

BILL No. 19 of 2022 *Friday 29th July, 2022*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

29th July, 2022

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. 19 of 2022

MOTOR VEHICLES AND ROAD TRAFFIC (AMENDMENT) BILL 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of Section 35 of the Principal Act.
3. Insertion of new Section 35A in the Principal Act.
4. Insertion of new Section 38A in the Principal Act.
5. Amendment of Section 39 of the Principal Act.
6. Amendment of Section 39A of the Principal Act.
7. Amendment of Section 39B of the Principal Act.
8. Amendment of Section 39C of the Principal Act.
9. Amendment of Section 39D of the Principal Act.
10. Amendment of Section 39G of the Principal Act.

A BILL

Intituled

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

A.D. 2022 Enacted by the Parliament of Guyana:-

Short title.

1. This Act, which amends the Motor Vehicles and Road Traffic Act, may be cited as the Motor Vehicles and Road Traffic (Amendment) Act 2022.

Cap.51:02

Amendment of section 35 of the Principal Act.

2. Section 35(3) of the Principal Act is amended by inserting immediately after the words "as respects that offence" the words "and this subsection shall *mutatis mutandis* apply to a charge instituted by information on oath but disposed of by a court of summary jurisdiction".

Insertion of new section 35A in the Principal Act.

3. The Principal Act is amended by inserting immediately after section 35 the following new section-

"Motor manslaughter and grievous bodily harm when driving under the influence of drink or drugs.

35A. (1) Any person who causes the death of another person by the driving of a motor vehicle on the road or other public place while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle shall be guilty of motor manslaughter and shall be liable on conviction on indictment to a term of imprisonment of not less than ten years.

(2) Any person who causes grievous bodily harm to another person by the driving of a motor vehicle on the road or other public place while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle shall be liable on conviction on indictment to a term of imprisonment of not less than five years.

(3) Where upon the trial of a person for an offence against this section the jury is not satisfied that the person's driving was the cause of the death or the grievous bodily harm but is satisfied that the person is guilty of driving as mentioned in subsections (1) and (2), it shall be lawful for the jury to convict the person of an offence under section 39 whether or not the requirements of section 46 have been satisfied as respects that offence and this subsection shall *mutatis mutandis* apply to a charge instituted by information on oath but disposed of by a court of summary jurisdiction.

(4) A person convicted of-

(a) an offence under this section shall, unless the court for special reason 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 three years from holding or obtaining a licence and the disqualification shall commence from the date the person is released from prison; and

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

Insertion of new section 38A in the Principal Act.

4. The Principal Act is amended by inserting immediately after section 38 the following new section –

"Temporary suspension of licence pending determination of charge.

38A. (1) Where any person is charged for the second time with contravening the provisions of section 35A, 39 or 39A, the court may order the suspension of the licence of that person pending the determination of the charge and upon suspension, the licence of the person shall be surrendered as soon as practicable to the court before which the person is charged.

(2) Where any person is charged for the third time time with contravening the provisions of section 35A, 39 or 39A, the court shall order the suspension of the licence of

that person pending the determination of the charge and upon suspension, the licence of the person shall be surrendered as soon as practicable to the court before which the person is charged.

(3) A person who fails to surrender a licence as required pursuant to subsection (1) or (2) commits an offence and shall be liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a period of three months.".

Amendment of section 39 of the Principal Act.

5. Section 39 of the Principal Act is amended as follows –

(a) in subsection (1) –

(i) by substituting for the words "not less than thirty thousand dollars nor more than sixty thousand dollars" the words "not less than two hundred thousand dollars"; and

(ii) by substituting for the words "not less than forty thousand dollars nor more than eighty thousand dollars" the words "not less than three hundred thousand dollars"; and

(b) in subsection (2), by substituting for that subsection the following –

"(2) A person convicted of –

(a) an offence under this section shall unless the court for special reason 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;

(b) two consecutive offences under this section shall unless the court for special reason 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 twenty-four months from the date of the conviction, from holding or obtaining a licence; and

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

Amendment of section 39A of the Principal Act.

6. Section 39A of the Principal Act is amended as follows –

(a) in subsection (2), by substituting for the words "seven thousand five hundred" the words "two hundred thousand"; and

(b) in subsection (3)(a), by substituting for the words "twelve months" the words "twenty-four months".

Amendment of section 39B of the Principal Act.

7. Section 39B of the Principal Act is amended as follows-

(a) in subsection (1) (a), by substituting for the words "is in breach of section 39" the words "is in breach of section 35A or 39"; and

(b) in subsection (8), by substituting for the words "this section or under section 39" the words "section 35A, this section or section 39".

Amendment of section 39C of the Principal Act.

8. Section 39C of the Principal Act is amended as follows –

(a) in subsection (1), by substituting for the words "subsections (2) and (3)" the words "subsections (2), (2A) and (3)";

(b) by inserting immediately after subsection (2), the following subsection –

"(2A) Before using a breath analysing instrument, the constable operating the instrument shall ensure that the instrument is –

(a) in satisfactory condition; and

(b) properly calibrated so that it produces an accurate breath analysis result." ;

(c) in subsection (8) by substituting for the words "under section 39," the words "under section 35A, 39,"; and

(d) in subsection (9), by inserting immediately after paragraph (c), the following paragraph –

"(cA) the instrument used by him was in a satisfactory condition and properly calibrated in accordance with subsection (2A);".

Amendment of section 39D.

9. Section 39D of the Principal Act is amended as follows –

(a) in subsection (1), by substituting for the words "under section 39" the words "under section 35A, 39"; and

(b) in subsection (5), by substituting for the words "and sections 39A," the words "and sections 35A, 39A,".

Amendment of section 39G of the Principal Act.

10. Section 39G (1) of the Principal Act is amended in the definition of "prescribed limit", by substituting for the word "and" the word "or".

EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the Motor Vehicles and Road Traffic Act, Cap. 51:02 to provide for the offences of motor manslaughter and causing grievous bodily harm while driving under the influence of alcohol or a drug. The Bill also amends the sections of the Principal Act relating to the offences of causing death by reckless or dangerous driving, driving under the influence of drink or drugs and driving or attempting to drive a motor vehicle when the person has consumed alcohol that exceeds the prescribed limits. Consequential amendments are also made to the procedural provisions of the Act dealing with the testing of the breath and blood of the accused.

Importantly, this Bill also provides for dissuasive penalties namely imprisonment, harsher fines and permanent disqualification from holding or obtaining a licence. These measures are important considering the risk of car accidents, severe injury or death that can result from a person driving under the influence of alcohol or a drug.

Clause 2 of the Bill seeks to amend section 35(3) of the Principal Act to provide that where upon the trial of a person charged for causing death by reckless or dangerous driving, the magistrate is not satisfied that the person's driving was the cause of death, it shall be lawful for the magistrate to find the person guilty of careless driving.

Clause 3 of the Bill seeks to amend the Principal Act by inserting a new section 35A to provide for the offences of motor manslaughter and causing grievous bodily harm when driving a motor vehicle under the influence of drink or a drug. A person will be found guilty of motor manslaughter where that person causes the death of another person while driving a motor vehicle under the influence of drink or a drug. This offence is an indictable one and the penalty is a term of imprisonment of not less than ten years. Where the person has caused grievous bodily harm to another person, while driving under the influence of drink or a drug, the penalty is a term of imprisonment of not less than five years. This new section also provides that where the jury or magistrate is not satisfied that the person's driving was the cause of the death or the grievous bodily harm but is satisfied that the person is guilty of driving under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, it shall be lawful for the jury or magistrate to convict the person of driving a motor vehicle under the influence of drink or

a drug. Moreover, a person convicted under this section shall be disqualified from holding or obtaining a licence for three years. In the event that the person is convicted again for a like offence, the person shall be permanently disqualified from holding or obtaining a licence.

Clause 4 of the Bill seeks to amend the Principal Act by inserting a new section 38A in the Act to provide for the temporary suspension of a licence pending the determination of a charge. Where any person is charged for the second time with contravening the provisions of section 35A (motor manslaughter and causing grievous bodily harm while driving under the influence of drink or a drug), section 39 (driving under the influence of drink or a drug) or section 39A (driving or being in charge of a vehicle while breath or blood alcohol levels exceeds the prescribed limit), the court may order the suspension of the licence of that person pending the determination of the charge and upon suspension, the licence of the person shall be surrendered as soon as practicable to the court before which the person is charged. Where the person is charged a third time with the aforementioned offences the court shall order the suspension of their licence pending the determination of the charge. Any person who fails to surrender the licence, shall be guilty of an offence of which the penalty is a fine of $100,000 or imprisonment for three months.

Clause 5 of the Bill seeks to amend section 39 (1) of the Principal Act by increasing the penalties for the offence of driving a motor vehicle under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle. Currently, the penalty is a fine ranging from $30,000 to $60,000 or imprisonment for twelve months and in the case of a second or subsequent conviction to a fine ranging from $40,000 to $80,000 and imprisonment. The monetary penalties are amended to reflect for a first conviction a fine not less than $200,000 and for a second or subsequent conviction a fine not less than $300,000. Additionally, subsection (2) of this section is amended to provide that a person convicted under this section shall be disqualified from holding or obtaining a licence for twelve months. Where the person is convicted for two consecutive offences the person shall be disqualified from holding or obtaining a licence for twenty-four months, and where there is a third conviction the person shall be permanently disqualified from holding or obtaining a licence.

Clause 6 of the Bill seeks to amend section 39A (2) of the Principal Act by increasing the penalty for the offence of driving or attempting to drive or being in charge of a vehicle on the road or other public place while the breath or blood alcohol levels exceed the prescribed limits.

Currently, the penalty is a fine of $7500. This penalty is amended to be $200,000. Subsection (3) of this section is also amended to increase the period of disqualification of holding or obtaining a licence where the person is charged with two consecutive offences from twelve months to twenty-four months.

Clause 7 of the Bill seeks to amend section 39B of the Principal Act to provide for that section, which empowers the constable to conduct a breath test, to also apply to new section 35A.

Clause 8 of the Bill seeks to amend section 39C of the Principal Act by inserting a new subsection (2A). This new subsection provides that before using a breath analysing instrument, the constable operating the instrument shall ensure that it is in satisfactory condition and is properly calibrated so that it produces an accurate breath analysis result. Further, subsection (9) is amended by inserting a new paragraph (cA) to provide that the constable shall certify that the instrument used by him was in a satisfactory condition and properly calibrated in accordance with subsection (2A).

Clause 9 of the Bill seeks to amend section 39D of the Principal Act to provide for that section, which deals with laboratory tests of blood specimen, to also apply to new section 35A.

Clause 10 of the Bill seeks to amend section 39G (1) of the Principal Act by substituting for the word "and" the word "or". As a result of this amendment, prescribed limit now means breath alcohol concentration, 35 microgrammes of alcohol in 100 millilitres of breath or blood alcohol concentration, 80 milligrammes of alcohol in 100 millilitres of blood, or such other proportion as may be prescribed.

Hon. Mohabir Anil Nandlall, SC, MP
Attorney General and
Minister of Legal Affairs