

A BILL

entitled

ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT ACT 2018

TABLE OF CONTENTS

1	Citation
2	Amends section 1
3	Inserts sections 35BA to 35BG
4	Amends section 35H
5	Consequential and other amendments
6	Commencement

WHEREAS it is expedient to amend the Road Traffic Act 1947 in relation to road sobriety checkpoints and to make consequential amendments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Road Traffic Act 1947 (the "principal Act"), may be cited as the Road Traffic (Road Sobriety Checkpoints) Amendment Act 2018.

Amends section 1

2 Section 1 of the principal Act is amended—

(a) by inserting the following in its proper alphabetic place—

“approved breath testing device” means a device of a kind that is designed to ascertain the presence of alcohol in the body of a person and is approved by order of the Minister as suitable for the purposes of section 35BA;”;

(b) in the definition of “approved instrument” by deleting “approved instrument” and substituting “approved breath analyzing instrument”;

(c) by deleting the definition of “qualified technician” and substituting—

ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT ACT 2018

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“qualified technician” means—

- (a) a person designated by the Commissioner of Police as being qualified to operate—
  - (i) an approved breath analyzing instrument; or
  - (ii) an approved breath testing device;
- (b) any person or class of persons approved by order of the Minister as being qualified, in respect of samples of blood, urine or other bodily substances, to take samples from a person for the purposes of sections 35C to 35H;”.

Inserts sections 35BA to 35BG

3 The principal Act is amended by inserting the following after section 35B—

“Preliminary breath test

35BA (1) A preliminary breath test is a procedure where a person provides a sample of breath to be used for the purpose of obtaining, by an approved breath testing device, an indication of the presence of alcohol in the person’s blood.

(2) A preliminary breath test shall be administered—

- (a) at or near the place where a police officer stops a person for committing an offence under section 35, 35A or 35AA; or
- (b) at or in close proximity to a road sobriety checkpoint.

Preliminary impairment test

35BB (1) A preliminary impairment test is a procedure where the police officer administering the test—

- (a) observes a person in his performance of tasks specified by the police officer; and
- (b) makes such other observations of the person’s physical state as the police officer thinks expedient.

(2) A preliminary impairment test may be administered—

- (a) at or near the place where a police officer stops a person for committing an offence under section 35, 35A or 35AA; or
- (b) at or in close proximity to a road sobriety checkpoint, if required.

Road sobriety checkpoint

35BC (1) This section shall have effect in relation to the conduct of road sobriety checkpoints by police officers for the purpose of ascertaining whether a person is committing an offence under section 35A or 35AA.

## ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT ACT 2018

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(2) If a police officer of or above the rank of superintendent reasonably suspects—

- (a) that incidents involving the consumption of alcohol may take place; and
- (b) that it is necessary to establish a road sobriety checkpoint to reduce the occurrence of persons driving under the influence of alcohol,

he may, with the written authorization of the Senior Magistrate, establish and conduct road sobriety checkpoints.

(3) An officer of or above the rank of superintendent may give written authorization for a road sobriety checkpoint if it appears to him that it is required as a matter of urgency.

(4) A written authorization under subsection (2) or (3)—

- (a) shall specify the date, location, time and duration of the road sobriety checkpoint;
- (b) may specify different dates (within a fourteen-day period), locations, times and durations.

(5) An officer of or above the rank of superintendent shall forward a copy of the written authorization under subsection (3) to the Senior Magistrate as soon as practicable after it is issued.

(6) For the purposes of this section, a road sobriety checkpoint consists of the exercise in a locality of the power conferred by section 30 in such a way as to stop, at the location, date, time and duration specified in a written authorization, all vehicles travelling through the road sobriety checkpoint.

(7) Nothing in this section affects the exercise by police officers of any power for purposes other than those specified in subsection (1).

(8) For the avoidance of doubt, subject to subsection (3), a road sobriety checkpoint shall only be conducted on the written authorization of the Senior Magistrate.

### Road sobriety checkpoint notice

35BD (1) As soon as practicable after receiving a written authorization under section 35BC(2), an officer of or above the rank of superintendent shall cause a notice of a road sobriety checkpoint to be published in the Gazette.

(2) A road sobriety checkpoint notice—

- (a) shall be published no more than fourteen days and no less than five days prior to the date provided in a written authorization given under section 35BC(2);
- (b) may provide for more than one road sobriety checkpoint.

## ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT ACT 2018

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(3) A sobriety checkpoint notice shall specify the date and parish in which the road sobriety checkpoint will be conducted.

(4) A road sobriety checkpoint notice is not required for a written authorization given under section 35BC(3).

(5) Once a road sobriety checkpoint notice is published in the Gazette, an officer of or above the rank of superintendent may authorize the publication of such notice by any other medium.

(6) A notice under this section is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.

### Preliminary testing; road sobriety checkpoint

35BE (1) Where a police officer, in uniform, at a road sobriety checkpoint has reasonable and probable grounds to suspect that a person is committing an offence under section 35A or 35AA he may, by demand made to that person, immediately require him to submit to a preliminary breath test or a preliminary impairment test.

(2) A person who, without reasonable excuse, fails or refuses to submit to a preliminary test under subsection (1) is guilty of an offence.

### Arrest

35BF A police officer may arrest a person at a road sobriety checkpoint without a warrant if, as a result of a preliminary test conducted under section 35BA or 35BB, he reasonably suspects that the person has committed an offence under section 35A or 35AA.”.

### Amends section 35H

4 Section 35H of the principal Act is amended in subsection (4)(a) by deleting “fifteen” and substituting “five”.

### Consequential and other amendments

5 (1) The principal Act is amended in sections 35H(4)(b) and (c), 35H(7), 35H(8)(a) and 35H(8)(c)(ii) by deleting the words “approved instrument” where they appear and substituting “approved breath analyzing instrument”.

(2) The Marine Board Act 1962 is amended in sections 114H(1)(b)(ii) and (iii), 114H(d)(i) and (iii)(B) and 114H(5) by deleting the words “approved instrument” where they appear and substituting “approved breath analyzing instrument”.

(3) Schedule 1 to the Traffic Offences (Penalties) Act 1976 is amended—

(a) by inserting the following after the item on section 35B(1) of the Road Traffic Act 1947—

- “ Head 1: Road Traffic Act 1947
- Head 2: section 35BF(2)
- Head 3: Failing to comply with demand for preliminary test

ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT ACT 2018

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- Head 4: summary
- Head 5: if first offence - \$1,500 or 12 months, or both  
if second offence - \$2,500 or 18 months, or both  
if third offence or subsequent offence - \$5,000 or 2 years, or both
- Head 6: if first offence - obligatory 18 months  
if second offence - obligatory 3 years  
if third or subsequent offence - obligatory 5 years
- Head 7: if first offence - 8 to 10 points  
if second offence - 10 to 12 points  
if third or subsequent offence - 12 points

(b) by deleting the items on sections 35C(7), 35D(3) and 35F(3) of the Road Traffic Act 1947 and inserting—

- “
- Head 1: Road Traffic Act 1947
  - Head 2: section 35C(7)
  - Head 3: Failing to comply with demand for sample of breath
  - Head 4: summary
  - Head 5: if first offence - \$1,500 or 12 months, or both  
if second offence - \$2,500 or 18 months, or both  
if third or subsequent offence - \$5,000 or 2 years, or both
  - Head 6: if first offence - obligatory 18 months  
if second offence - obligatory 3 years  
if third or subsequent offence - obligatory 5 years
  - Head 7: if first offence - 8 to 10 points  
if second offence - 10 to 12 points  
if third or subsequent offence - 12 points
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- Head 1: Road Traffic Act 1947
  - Head 2: section 35D(3)
  - Head 3: Failing to comply with demand for drug screening test
  - Head 4: summary
  - Head 5: if first offence - \$1,500 or 12 months, or both  
if second offence - \$2,500 or 18 months, or both  
if third or subsequent offence - \$5,000 or 2 years, or both
  - Head 6: if first offence - obligatory 18 months  
if second offence - obligatory 3 years  
if third or subsequent offence - obligatory 5 years
  - Head 7: if first offence - 8 to 10 points  
if second offence - 10 to 12 points  
if third or subsequent offence - 12 points
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- Head 1: Road Traffic Act 1947

ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT ACT 2018

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- Head 2: section 35F(3)
- Head 3: Failing to comply with demand for sample for dangerous drug analysis
- Head 4: summary
- Head 5: if first offence - \$1,500 or 12 months, or both  
if second offence - \$2,500 or 18 months, or both  
if third or subsequent offence - \$5,000 or 2 years, or both
- Head 6: if first offence - obligatory 18 months  
if second offence - obligatory 3 years  
if third or subsequent offence - obligatory 5 years
- Head 7: if first offence - 8 to 10 points  
if second offence - 10 to 12 points  
if third or subsequent offence - 12 points

Commencement

6 This Act shall come into operation on such day as the Minister appoints by notice in the Gazette.

## ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT BILL 2018

### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Road Traffic Act 1947 (“the principal Act”) in relation to road sobriety checkpoints and to make consequential amendments.

Clause 1 is the citation of the Bill.

Clause 2 (1) changes the name of an “approved instrument” to an “approved breath analyzing instrument”, (2) inserts the new definition of an “approved breath testing device” and (3) expands the definition of “qualified technician” to include a person qualified to operate an approved breath testing device.

Clause 3 inserts sections 35BA to 35BG into the Bill to provide—

(1) for the administration of preliminary breath test and preliminary impairment test (sections 35BA and 35BB) if a person is stopped for an offence under section 35 (causing death when driving under the influence), 35A (driving over the prescribed limit) or 35AA (driving under the influence) offences for or in a road sobriety checkpoint;

(2) for the conduct of road sobriety checkpoints (section 35BC) on written authorization of the Senior Magistrate or an officer of or above the rank of superintendent in matters of urgency;

(3) that an officer of or above the rank of superintendent shall publish a road sobriety checkpoint notice (section 35BD) in the Gazette no more than fourteen days and no less than five days prior to the date of a road sobriety checkpoint as provided in an authorisation from the Senior Magistrate;

(4) for preliminary testing in a road sobriety checkpoint (section 35BE) and creates the offence for a person who, without reasonable excuse, fails or refuses to submit to a preliminary test;

(5) for the arrest of person without a warrant (section 35BF) at a road sobriety checkpoint if a police officer reasonably suspects, as a result of a preliminary test, that the person is driving over the prescribed limit (section 35A) or driving under the influence of alcohol (section 35AA).

Clause 4 amends section 35H of the principal Act by changing the time required between the administration of the two substantive breath tests.

Clause 5 provides amendments to—

(1) the principal Act and the Marine Board Act 1962 to reflect an approved breath analyzing instrument (a result of amending the name in clause 2);

(2) the Traffic Offences Penalties Act 1974 to—

(a) to create the penalty for failing to comply with demand for a preliminary test (section BE(2)); and

ROAD TRAFFIC (ROAD SOBRIETY CHECKPOINTS) AMENDMENT BILL 2018

(b) to increase and streamline the penalties for offences under section 35C(7) (failing to comply with a demand for a sample of breath), 35D(3) (failing to comply with a demand for a drug screening test) and section 35F(3) (failing to comply with sample for a dangerous drug analysis).

Clause 6 provides for the commencement of the Bill.