

tobacco FOR PRIVATE PURPOSES BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of 2020)

(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B —2020]2

BILL

To—

- * respect the right to privacy of an adult person to possess tobacco plant cultivation material; to cultivate a prescribed quantity of tobacco plants; to possess a prescribed quantity of tobacco; and to consume tobacco;**
- * regulate the possession of tobacco plant cultivation material; the cultivation of tobacco plants; the possession of tobacco; and the consumption of tobacco by an adult person;**
- * protect adults and children against the harms of tobacco;**
- * provide for the expungement of criminal records of persons convicted of possession or use of tobacco;**
- * delete and amend provisions of certain laws; and**
- * provide for matters connected therewith.**

PARLIAMENT of the Republic of South Africa enacts as follows:—

ARRANGEMENT OF SECTIONS

Sections

1. Definitions and interpretation
2. Prescribed quantities for personal use by adult person
3. Cultivation offences
4. tobacco offences
5. Consumption offences
6. Offences involving a child
7. Penalties
8. Expungement of criminal records of persons convicted of possession or use of tobacco
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10. Repeal or amendment of laws
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Schedule 1

tobacco plant equivalent

Schedule 2

tobacco equivalent

Schedule 3

Prescribed quantity

Schedule 4

Trafficable and commercial quantities

Schedule 5

Laws repealed or amended

Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise—

"**adult person**" means a person who is 18 years or older;

"**tobacco**" means—

(a) the flowering or fruiting tops and the leaves of a tobacco plant that have been separated from the plant, but excludes any seed, seedling, the stalk and branches without any leaf, fruit or flower, and the roots of a tobacco plant; and

(b) any substance which contains Nicotine, and fresh tobacco, dried tobacco and tobacco concentrate, are classes of tobacco;

"**tobacco concentrate**" means tobacco that has undergone a process to concentrate the Nicotine content, and tobacco solid concentrates and tobacco liquid

concentrates are classes of tobacco concentrate;⁴

"**tobacco equivalent**" means a quantity referred to in Column 2 of Schedule 2, in

respect of any class of tobacco referred to in Column 1 of that Schedule which is

deemed to be equivalent to one gram of dried tobacco;

"**tobacco plant**" means a plant of the genus *tobacco*, but excludes Fiber, and for

purposes of this Act, an immature tobacco plant and a flowering tobacco plant are

classes of a tobacco plant;

"**tobacco plant cultivation material**" means seeds of a tobacco plant and seedlings;

"**tobacco plant equivalent**" means a quantity referred to in Column 2 of Schedule

1, in respect of any class of tobacco plant referred to in Column 1 of that Schedule

which is deemed to be equivalent of one flowering tobacco plant;

"**tobacco product**" means anything that is intended for human or animal consumption which contains Nicotine or any other phytocannabinoid found in a tobacco

plant;

"**child**" means a person who is under the age of 18 years;

"Children's Act, 2005" means the Children's Act, 2005 (Act No. 38 of 2005);

"commercial quantity" means for purposes of the sections referred to in Column 1

of Schedule 4, the quantity that exceeds—

(a) the quantity of any flowering tobacco plant or its tobacco plant equivalent;
or

(b) the quantity of any dried tobacco or its tobacco equivalent,
respectively, referred to in Column 3 of that Schedule;

"consumption" or **"consume"** means to smoke, eat, drink or otherwise to self administer tobacco;

"cultivate" includes to plant, propagate, nurture, tend, grow or harvest a tobacco

plant and **"cultivation"** has a corresponding meaning;

"deal in" means to provide for consideration, receive for consideration, sell, buy,

offer for sale, offer to purchase, import, advertise for sale, have in possession for the

purposes of sale, export and any other conduct to facilitate selling;

"dried tobacco" means the flowering or fruiting tops and the leaves of a tobacco

plant that have been separated from the plant and that have been subjected to a

drying process;⁵

"dwelling" means any part of a formal or informal structure that is occupied as a

residence, or any part of a structure or outdoor living area that is accessory to, and

used principally for the purposes of, a residence;

"flowering tobacco plant" means the gametophytic or reproductive state of a tobacco plant in which the plant produces flowers, trichomes and cannabinoids characteristic of tobacco;

"fresh tobacco" means the flowering or fruiting tops and the leaves of a tobacco

plant that have been separated from the plant and that has not been subjected to a

drying process;

"guardian" means a guardian referred to in section 1 of the Children's Act, 2005;

"harvest" means to obtain and process tobacco from a tobacco plant;

"Fiber" means a plant of the genus *tobacco* which—

(a) has a concentration of Nicotine in the leaves and flowering heads that does not

exceed the percentage as may be prescribed in terms of; and

(b) is cultivated under authority of,
a law that regulates its cultivation;

"immature tobacco plant" means a non-flowering tobacco plant that is—

(a) taller than 15 centimetres; or

(b) wider than 15 centimetres,

measured according to the criteria prescribed by regulation;

"Minister" means the Cabinet member responsible for the administration of
justice;

"National Road Traffic Act, 1996" means the National Road Traffic Act, 1996
(Act

No. 93 of 1996);

"personal use" means for the exclusive use of an adult person;

"possess in private" for purposes of section 2(1)(c) and (e), means to keep,
store,

transport or be in control of tobacco or a tobacco plant, respectively, in a
manner

that conceals it from public view;

"prescribed quantity" means for purposes of the sections referred to in
Column 1 of

Schedule 3, the quantity that does not exceed—

(a) the quantity of tobacco plant cultivation material;

(b) the quantity of any flowering tobacco plant or its tobacco plant equivalent;
or

(c) the quantity of any dried tobacco or its tobacco equivalent,
respectively, referred to in Column 2 of that Schedule;⁶

"private place" means any place, including a building, house, room, shed, hut,
tent,

mobile home, caravan, boat or land or any portion thereof, to which the public
does

not have access as of right;

"public place" means any place to which the public has access as of right;

"public road" means a "public road" as defined in section 1 of the National
Road

Traffic Act, 1996;

"remuneration" means any form of compensation, gift, reward, favour or
benefit;

"seedling" means a non-flowering tobacco plant that is not—

(a) taller than 15 centimetres; or

(b) wider than 15 centimetres,

measured according to the criteria prescribed by regulation;

"smoke" means to inhale or exhale the smoke produced by ignited tobacco or
holding or otherwise having control of ignited tobacco or any device or object
that

contains ignited tobacco;

"Nicotine" means (-)-trans-delta-9-tetrahydrocannabinol;

"this Act" includes the regulations;

"trafficable quantity" means for purposes of the sections referred to Column 1 of

Schedule 4, the quantity that exceeds—

(a) the quantity of any flowering tobacco plant or its tobacco plant equivalent; or

(b) the quantity of any dried tobacco or its tobacco equivalent, respectively, referred to in Column 2 of that Schedule; and

"vehicle" means a "vehicle" as defined in section 1 of the National Road Traffic Act, 1996.

(2) Sections 3(1), (4), (5), (6), (7) and (8) and 4(1), (2), (4) and (5) of this Act do not apply to any person who is permitted or authorised in terms of any

other Act of Parliament to—

(a) deal in tobacco plant cultivation material, tobacco plants, tobacco or a tobacco product; or

(b) cultivate tobacco plants.

Prescribed quantities for personal use by adult person 7

2. (1) Subject to this Act, an adult person may for personal use—

(a) possess the prescribed quantity of tobacco plant cultivation material;

(b) cultivate the prescribed quantity of tobacco plants in a private place;

(c) possess in private, the prescribed quantity of tobacco in a public place;

(d) possess the prescribed quantity of tobacco in a private place; and

(e) possess in private, the prescribed quantity of tobacco plants in a public place.

(2) Subject to this Act, an adult person may consume tobacco in a private place.

(3) Subject to this Act, an adult person may without the exchange of remuneration provide to, or obtain from, another adult person, for personal use the

prescribed quantity of —

(a) tobacco plant cultivation material;

(b) tobacco plants; and

(c) tobacco.

Cultivation offences

3. (1) An adult person who in a private place, cultivates—

(a) more than the prescribed quantity, contemplated in section 2(1)(b), but less than a trafficable quantity of tobacco plants, is guilty of a Class C offence;

(b) a trafficable quantity of tobacco plants, is guilty of a Class B offence; or

(c) a commercial quantity of tobacco plants, is guilty of a Class A offence.

(2) An adult person who cultivates a tobacco plant at any place and who fails to—

(a) take reasonable measures to ensure that the tobacco plant is inaccessible to

a child; or

(b) comply with any requirement or standard regarding the cultivation of tobacco

plants in a private place for personal use as prescribed by regulation, is guilty of a Class C offence.⁸

(3) An adult person who cultivates a tobacco plant in a public place, is guilty of a Class B offence.

(4) An adult person who provides to, or obtains from, an adult person without the exchange of remuneration—

(a) a quantity that exceeds the prescribed quantity contemplated in section 2(3)(b), but which is less than a trafficable quantity of tobacco plants, is guilty of a Class C offence;

(b) a trafficable quantity of tobacco plants, is guilty of a Class B offence; or

(c) a commercial quantity of tobacco plants, is guilty of a Class A offence.

(5) An adult person who is in possession in a public place of—

(a) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(e), but which is less than a trafficable quantity of tobacco plants, is guilty of a Class C offence;

(b) a trafficable quantity of tobacco plants, is guilty of a Class B offence; or

(c) a commercial quantity of tobacco plants, is guilty of a Class A offence.

(6) (a) Any person who deals in an immature tobacco plant, is guilty of a Class C offence.

(b) Any person who deals in a flowering tobacco plant, is guilty of a Class A offence.

(7) Any person who deals in tobacco plant cultivation material, is guilty of a Class D offence.

(8) An adult person who provides to, or obtains from, an adult person without the exchange of remuneration a quantity that exceeds the prescribed

quantity of tobacco plant cultivation material contemplated in section 2(3)(a), is guilty of a Class D offence.

(9) Any person who is in possession in a public place of tobacco plant cultivation material or a tobacco plant that is not concealed from public view,

is guilty of a Class D offence.

tobacco offences

4. (1) Any person who is in possession in a public place of—⁹

(a) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(c), but which is less than a trafficable quantity of tobacco, is guilty of a Class C offence;

(b) a trafficable quantity of tobacco, is guilty of a Class B offence; or

(c) a commercial quantity of tobacco, is guilty of a Class A offence.

- (2) An adult person who is in possession in a private place of—
- (a) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(d), but which is less than a trafficable quantity of tobacco, is guilty of a Class C offence;
 - (b) a trafficable quantity of tobacco, is guilty of a Class B offence; or
 - (c) a commercial quantity of tobacco, is guilty of a Class A offence.
- (3) An adult person who is in possession of tobacco at any place and who—
- (a) fails to store such tobacco in a secure space that is inaccessible to a child; or
 - (b) stores such tobacco in a manner that does not comply with any requirement or standard regarding the storing of tobacco prescribed by regulation, is guilty of a Class C offence.
- (4) An adult person who provides to or obtains from an adult person without the exchange of remuneration—
- (a) a quantity that exceeds the prescribed quantity, contemplated in section 2(3)(c), but which is less than a trafficable quantity of tobacco, is guilty of a Class C offence;
 - (b) a trafficable quantity of tobacco, is guilty of a Class B offence; or
 - (c) a commercial quantity of tobacco, is guilty of a Class A offence.
- (5) Any person who deals in tobacco, is guilty of a Class A offence.
- (6) An adult person who transports tobacco in a vehicle on a public road in a manner that does not comply with any requirement or standard regarding the transportation of tobacco that may be prescribed by regulation, is guilty of a Class C offence.
- (7) Any person who is in possession in a public place of tobacco that is not concealed from public view, is guilty of a Class C offence.10

Consumption offences

5. (1) Any person who smokes tobacco in a public place, is guilty of a Class D offence.
- (2) Any person who smokes tobacco in the immediate presence of any non-consenting adult person, is guilty of a Class D offence.
- (3) Any person who smokes tobacco in the immediate presence of a child, is guilty of a Class C offence.
- (4) Any person who smokes tobacco in a private place—
- (a) within a distance prescribed by regulation from a window of, ventilation inlet of, doorway to or entrance into another place; or
 - (b) forming part of any place where persons congregate within close proximity of one another and where the smoke is likely to cause a hindrance to any person at that place, is guilty of a Class D offence.

(5) Any person who consumes tobacco in, at or near any place prescribed by regulation where the consumption of tobacco is prohibited, is guilty of

a Class C offence.

(6) Any person who consumes tobacco in a vehicle on a public road, is guilty of a Class C offence.

Offences involving a child

6. (1) (a) The guardian of a child who permits a child—

(i) to possess tobacco plant cultivation material or a tobacco plant;

(ii) to deal in tobacco plant cultivation material or a tobacco plant;

(iii) subject to paragraph (b), to cultivate a tobacco plant;

(iv) to possess tobacco;

(v) to deal in tobacco; or

(vi) to consume tobacco,

is guilty of a Class D offence.¹¹

(b) The prohibition referred to in paragraph (a)(iii), does not apply where the child assists with the cultivation of tobacco plants which the guardian of the child may lawfully possess for his or her personal use in a private

place, in the presence and under the supervision of that guardian.

(2) Any person who engages a child, whether for remuneration to the child or a third person or not, to deal in—

(a) tobacco plant cultivation material;

(b) a tobacco plant; or

(c) tobacco,

is guilty of a Class A offence.

(3) Any person who provides to a child, whether for remuneration or not—

(a) tobacco plant cultivation material;

(b) a tobacco plant; or

(c) tobacco,

is guilty of a Class A offence.

(4) Subject to subsection (1)(b), an adult person who engages a child, whether for remuneration to the child or a third person or not, in the cultivation

of a tobacco plant, is guilty of a Class A offence.

(5) Any person who administers tobacco to a child, is guilty of a Class A offence.

Penalties

7. (1) A person who is convicted of—

(a) a Class A offence is liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment;

(b) a Class B offence is liable on conviction to a fine or to imprisonment for a period not exceeding six years or to both a fine and such imprisonment;

(c) a Class C offence is liable on conviction to a fine or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment; or¹²
(d) a Class D offence is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Expungement of criminal records of persons convicted of possession or use of tobacco

8. (1) Where a court has convicted a person of a contravention of —
(a) section 2(b) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), in that the person used or possessed the dependence-producing drug or plant of tobacco (dagga);
(b) section 4(b) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), in that the person used or possessed the undesirable dependence producing substance of tobacco (dagga); or
(c) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or of any former self-governing territory, as provided for in the Self governing Territories Constitution Act, 1971 (Act No. 21 of 1971), before the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), that criminalised the use or possession of tobacco (dagga),
the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service.

(2) Where the criminal record of a person referred to in subsection (1) has not been expunged automatically as provided for in that subsection, the criminal record of that person must, on his or her written application to the Director

General: Justice and Constitutional Development, in the prescribed form and manner, be expunged.

(3) The Director-General: Justice and Constitutional Development must, on receipt of the written application of an applicant referred to in subsection (2), issue a prescribed certificate of expungement, directing that the conviction and sentence of the person be expunged, if the Director-General is satisfied that the person complies with the criteria set out in subsection (1).¹³

(4) An applicant to whom a certificate of expungement has been

issued as provided for in subsection (3) must, in the prescribed manner, submit the

certificate to the head of the Criminal Record Centre of the South African Police

Service, to be dealt with in accordance with subsection (5).

(5) (a) The head of the Criminal Record Centre of the South African Police Service or a senior person or person at the rank of Director or above,

employed at the Centre, who has or have been authorised, in writing, by the head of

the Centre to do so, must expunge the criminal record of a person if he or she is

furnished by the applicant with a certificate of expungement as provided for in subsection (3).

(b) The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, in writing, confirm

that the criminal record of the person has been expunged.

(6) Where the Director-General: Justice and Constitutional Development, in terms of subsection (3), has issued a certificate of expungement,

and it subsequently appears that the applicant did not qualify for the expungement of

his or her criminal record, the Director-General must—

(a) inform the applicant in writing of the information that has come to his or her attention and that he or she intends to revoke the certificate of expungement;

(b) afford the applicant an opportunity to furnish compelling written reasons to him or her within 90 working days after he or she is informed of the intention to revoke, why his or her record should remain expunged;

(c) inform the applicant in writing within 30 working days after a decision is made

of—

(i) his or her decision; and

(ii) the reasons for revoking the certificate of expungement; and

(d) inform the head of the Criminal Record Centre of the South African Police Service, in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and sentences in question.

(7) If the applicant fails to furnish compelling reasons contemplated in subsection (6)(b), the Director-General may, subject to the Promotion of 14 Administrative Justice Act, 2000 (Act No. 2 of 2000), revoke the certificate of expungement.

(8) (a) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred upon or

assigned to him or her in terms of subsection (3) or (6) to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

(b) A delegation or assignment in terms of paragraph (a)—

(i) is subject to any limitation, condition and direction which the Director-General may impose;

(ii) must be in writing; and

(iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(c) The Director-General may—

(i) confirm, vary or revoke any decision taken in consequence of a delegation or

assignment in terms of this subsection, subject to any rights that may have accrued to a person as a result of the decision; and

(ii) at any time withdraw a delegation or assignment.

Regulations

9. (1) The Minister must make regulations to prescribe—

(a) the manner of measuring immature tobacco plants and seedlings as contemplated in section 1;

(b) the requirements or standards regarding the cultivation of tobacco plants in a

private place for personal use as contemplated in section 3(2)(b);

(c) the requirements or standards regarding the storing of tobacco as contemplated in section 4(3)(b);

(d) the requirements or standards regarding the transportation of tobacco as contemplated in section 4(6);

(e) the distance from a window of, ventilation inlet of, doorway to or entrance into

another place as contemplated in section 5(4)(a);¹⁵

(f) the form on which a person's written application for the expungement of his or

her criminal record must be made, as provided for in section 8(2);

(g) the certificate of expungement to be issued by the Director-General: Justice and Constitutional Development as provided for in section 8(3); and

(h) the manner in which the Director-General must submit certificates of expungement that have been issued, to the head of the Criminal Record Centre of the South African Police Service, as provided for in section 8(4).

(2) The Minister may make regulations to prescribe—

(a) the places where tobacco may not be consumed as contemplated in section

5(5);

(b) the manner in which tobacco plants or tobacco in excess of the prescribed quantity must be disposed of; and

(c) any other matter which is necessary or expedient to achieve the objects of this Act.

(3) Regulations made in terms of subsection (2)(b) and (c), may prescribe penalties for any contravention thereof or failure to comply therewith, not

exceeding a fine or imprisonment for a period of six months or both a fine and such

imprisonment.

Repeal or amendment of laws

10. The laws mentioned in Schedule 5 are hereby repealed or amended to the extent reflected in the third Column of the Schedule.

Short title and commencement

11. This Act is called the tobacco for Private Purposes Act, 2020, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.¹⁶

Schedule 1

(Section 1)

tobacco PLANT EQUIVALENT

Column 1

Class of tobacco plant

Column 2

Quantity that is equivalent to one flowering tobacco plant

Immature tobacco plant Two plants

Schedule 2

(Section 1)

tobacco EQUIVALENT

Column 1

Class of tobacco

Column 2

Quantity that is equivalent to 1 gram of dried tobacco

(a) Fresh tobacco Five grams

(b) tobacco solid concentrates 0, 25 gram

(c) tobacco liquid concentrates 0, 25 gram

Schedule 3

(Sections 1 and 2)

PRESCRIBED QUANTITY

Column 1

Sections

Column 2

Quantity of class

- (a) Section 2(1)(a) Unlimited seeds and seedlings
- (b) Section 2(1)(b) (i) Four flowering tobacco plants or tobacco plant equivalent per adult person; or
(ii) eight flowering tobacco plants or tobacco plant equivalent per dwelling which is occupied by two or more adult persons
- (c) Section 2(1)(c) 100 grams dried tobacco or tobacco equivalent
- (d) Section 2(1)(d) (i) 600 grams dried tobacco or tobacco equivalent per adult; or
(ii) 1200 grams dried tobacco or tobacco equivalent per dwelling which is occupied by two or more adult persons
- (e) Section 2(1)(e) One flowering tobacco plant or tobacco plant equivalent
- (f) Section 2(3)(a) 30 seeds or seedlings or any combination thereof
- (g) Section 2(3)(b) One flowering tobacco plant or tobacco plant 17 equivalent
- (h) Section 2(3)(c) 100 grams dried tobacco or tobacco equivalent

Schedule 4

(Sections 1, 3 and 4)

TRAFFICABLE AND COMMERCIAL QUANTITIES

Column 1

Sections

Column 2

Trafficable quantity of class

Column 3

Commercial quantity of class

- (a) Section 3(1)(b) (i) Six flowering tobacco plants or tobacco plant equivalent per adult person; or
(ii) twelve flowering tobacco plants or tobacco plant equivalent per dwelling which is occupied by two or more adult persons
- (b) Section 3(1)(c) (i) Nine flowering tobacco plants or tobacco plant equivalent per adult person; or
(ii) Eighteen flowering tobacco plants or tobacco plant equivalent per dwelling

which is occupied by
two or more adult
persons

(c) Section 3(4)(b) Two flowering tobacco plants or
tobacco plant equivalent

(d) Section 3(4)(c) Four flowering tobacco
plants or tobacco plant
equivalent

(e) Section 3(5)(b) Two flowering tobacco plants or 18

Column 1

Sections

Column 2

Trafficable quantity of class

Column 3

**Commercial quantity of
class**

tobacco plant equivalent

(f) Section 3(5)(c) Four flowering tobacco
plants or tobacco plant
equivalent

(g) Section 4(1)(b) 200 grams dried tobacco or
tobacco equivalent

(h) Section 4(1)(c) 300 grams dried tobacco or
tobacco equivalent

(i) Section 4(2)(b) (i) 800 grams dried tobacco or
tobacco equivalent per
adult; or

(ii) 1500 grams dried tobacco
or tobacco equivalent per
dwelling which is occupied
by two or more adult
persons

(j) Section 4(2)(c) (i) 1000 grams dried
tobacco or tobacco
equivalent per adult; or

(ii) 2000 grams dried
tobacco or tobacco
equivalent per dwelling
which is occupied by
two or more adult
persons

(k) Section 4(4)(b) 200 grams dried tobacco or
tobacco equivalent

(l) Section 4(4)(c) 300 grams dried tobacco or

tobacco equivalent

Schedule 519

(Section 10)

LAWS REPEALED OR AMENDED

Number and year

of law

Short title Extent of repeal or amendment

Act No. 140 of

1992

Drugs and Drug

Trafficking Act,

1992

(a) Part II of Schedule 2 is amended by the deletion of the item:

"Dronabinol [(-)-transdelta-9-tetrahydrocannabinol]."

(b) Part III of Schedule 2 is amended by the deletion of the items:

(i) "tobacco (dagga), the whole plant or any portion or product thereof, except dronabinol [(-)-transdelta-9-tetrahydrocannabinol]"; and

(ii) "Tetrahydrocannabinol".

Act No. 93 of 1996 National Road

Traffic Act, 1996

(a) The Index to the Act is amended by—

(i) the substituted for the heading to Chapter XI of the following heading:

**"RECKLESS OR NEGLIGENT DRIVING,
INCONSIDERATE DRIVING, DRIVING WHILE UNDER
THE INFLUENCE OF INTOXICATING LIQUOR, Nicotine
OR A DRUG HAVING A NARCOTIC EFFECT, AND
MISCELLANEOUS OFFENCES";** and

(ii) the substitution for item 65 of Chapter XI of the following item:

**"Driving or occupying driver's seat while under the
influence of intoxicating liquor[or], a drug having
narcotic effect or Nicotine, or with excessive amount of
alcohol or Nicotine or a drugs having a narcotic effect in
blood or breath";**

(b) The insertion in section 1—

(i) after the definition of "**driving licence testing
centre**" of the following definition:

"drug having a narcotic effect' means any substance or a combination of substances that have an impairing effect on a person's ability to control his

or her actions, but excludes Nicotine;"; and
(ii) after the definition of "**testing station**" of the following definition:

"**Nicotine**' means any substance containing (-)-trans delta-9-tetrahydrocannabinol;".

(c) The amendment of section 15 by the substitution in subsection (1) for paragraph (g) of the following paragraph:

"(g) if he or she is addicted to the use of any drug having a narcotic effect, or the excessive use of intoxicating liquor or Nicotine; or".

(d) The amendment of section 61 by the substitution in subsection (1) for paragraph (g) of the following paragraph:

"(g) not, except on the instructions of or when administered by a medical practitioner in the case of injury or shock, take any intoxicating liquor, Nicotine, or drug having a narcotic effect unless he or she has complied with the provisions of paragraph (f), where it is his or her duty to do so, and has been examined by a medical practitioner if such 20

**Number and year
of law**

Short title Extent of repeal or amendment

examination is required by a traffic officer."

(e) The amendment of section 65 by—

(i) the substitution for the heading to that section of the following heading:

"Driving or occupying driver's seat while under the influence of intoxicating liquor[or], a drug having narcotic effect or Nicotine, or with excessive amount of alcohol or Nicotine or a drugs having a narcotic effect in blood or breath";

(ii) the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

"(1) No person shall on a public road—

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running, while under the influence of intoxicating liquor, Nicotine or a drug having a narcotic effect or any combination thereof.

(2) No person shall on a public

road—

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running,

while the concentration of—

(i) alcohol;

(ii) Nicotine;

(iii) a drug having a narcotic effect; or

(iv) any combination of (i), (ii) and (iii),

in any specimen of blood taken from any part of his

or her body is not less than **[0,05 gram per 100**

millilitres, or in the case of a professional driver

referred to in section 32, not less than 0,02

gram per 100 millilitres] the concentration of

alcohol, Nicotine or a drug having a narcotic effect or a

combination thereof specified in subsection (10).

(3) For purposes of subsection (2)

or subsection 5(a) or (b)(ii), **[I]**if, in any prosecution

for an alleged contravention of a provision of

[subsection (2)] those subsections, it is proved that

the concentration of alcohol, Nicotine or other drug

having a narcotic effect or a combination thereof, in

any specimen of blood taken from any part of the

body of the person concerned was not less than

[0,05 gram per 100 millilitres] the concentration

specified in subsection (10) or (11), respectively, at

any time within two hours after the alleged

contravention, it shall be presumed, in the absence

of evidence to the contrary, that such concentration

was not less than **[0,05 gram per 100 millilitres at**

the time of the alleged contravention, or in the

case of a professional driver referred to in

section 32, not less than 0,02 gram per 100

millilitres it shall be presumed, in the absence of

evidence to the contrary, that such

concentration was not less than 0,02 gram per

100 millilitres] the concentrations specified in those²¹

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subsections, respectively, at the time of the alleged

contravention.";

(iii) the substitution for subsections (5) and (6) of the

following subsections respectively:

"(5) No person shall on a public road—

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle, the engine of which is running, while the concentration—

(i) of alcohol in any specimen of breath exhaled by such person is not less than **[0,24 milligrams per 1 000 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres]** the

concentration specified in subsection (11);

or

(ii) of alcohol in any specimen of breath exhaled by such person in combination with Nicotine or drug having a narcotic effect in any specimen of blood taken from any part of the body of the person is not less than the concentration specified in subsection (11).

(6) If, in any prosecution for a contravention of a provision of subsection (5), it is proved that the concentration of alcohol in any specimen of breath of the person concerned **[was not less than 0,24 milligrams per 1 000 millilitres of breath]** taken at any time within two hours after the alleged contravention was not less than the concentration specified in subsection (11), it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than **[0,24 milligrams per 1 000 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,10 milligrams per 1 000 millilitres]** the concentration specified in subsection (11) at the time of the alleged contravention.";

(iv) the substitution for subsection (8) of the following subsection:

"(8) Except on the instruction of or when administered by a medical practitioner, no person detained for an alleged contravention of any

provision of this section shall during his or her detention consume any alcohol, Nicotine or a drug having a narcotic effect, nicotine, or any medication until the specimen referred to in subsection (3) or (6) has been taken."; and

(v) the addition of the following subsection after subsection (9):

"(10) (a) Where a person is a professional driver referred to in section 32—
(i) a concentration of less than a concentration of 22

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a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood;

(ii) a concentration of less than—

(aa) 0,02 gram alcohol per 100 millilitres of blood;

(bb) 200 nanograms Nicotine per 100 milliliters of blood; or

(cc) 0,01 gram alcohol and 100 nanograms Nicotine per 100 millilitres of blood,

without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or

(iii) a concentration of less than—

(aa) 0,01 gram alcohol and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood; or

(bb) 100 nanograms Nicotine and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood.

(b) Where a person is not a professional driver—

(i) a concentration of less than a concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood;

(ii) a concentration of less than—

(aa) 0,05 gram alcohol per 100 millilitres of blood;

(bb) 500 nanograms Nicotine per 100

milliliters of blood; or
(cc) 0,025 gram alcohol and 250
nanograms Nicotine per 100 millilitres of
blood,
without any detectable concentration of a drug
having a narcotic effect, as may be
prescribed; or
(iii) a concentration of less than—
(aa) 0,025 gram alcohol and any
concentration of a drug having a
narcotic effect, as may be prescribed,
per 100 millilitres of blood; or
(bb) 250 nanograms Nicotine and any
concentration of a drug having a
narcotic effect, as may be prescribed,
per 100 millilitres of blood.
(11) (a) Where a person is a
professional driver referred to in section 32—
(i) a concentration of less than—
(aa) 0,10 milligrams alcohol per 1000
millilitres of breath; or
(bb) 0,5 milligrams alcohol per 1000
millilitres of breath and 100
nanograms Nicotine per 100 millilitres of
blood,
without any detectable concentration of a drug 23

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having a narcotic effect, as may be
prescribed; or
(ii) a concentration of less than 0,5 milligrams
alcohol per 1000 millilitres of breath and any
concentration of a drug having a narcotic
effect, as may be prescribed, per 100
millilitres of blood.
(b) Where a person is not a
professional driver—
(i) a concentration of less than—
(aa) 0,24 milligrams alcohol per 1000
millilitres of breath; or
(bb) 0,12 milligrams alcohol per 1000
millilitres of breath and 250
nanograms Nicotine per 100 millilitres of

blood,
without any detectable concentration of a drug
having a narcotic effect, as may be
prescribed; or

(ii) a concentration of less than 0,12 milligrams
alcohol per 1000 millilitres of breath and any
concentration of a drug having a narcotic
effect, as may be prescribed, per 100
millilitres of blood.

(f) The amendment of section 75 by the insertion after
subsection (1) of the following subsection:

"(1A) The Minister may, in
consultation with the Cabinet member responsible for
health, prescribe any drug or category or class of such
drugs having a narcotic effect and the concentration
thereof for purposes of section 65(10) or (11)."

Act No. 75 of 2008 Child Justice Act,
2008

Amendment of Schedule I to the Act, by the addition of the
following item, after item 18:

"19. An offence provided for in sections 3(6), (7) and (9),
4(7) and 5 of the tobacco for Private Purposes Act."