

# **Land Transport Amendment Bill**

Government Bill

As reported from the Transport and  
Industrial Relations Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Land Transport Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Land Transport Amendment Bill proposes a number of amendments to the Land Transport Act 1998, to address the problem of alcohol-impaired driving.

The bill seeks to

- lower the adult legal alcohol limits from 80 to 50 milligrams per 100 millilitres of blood, and from 400 to 250 micrograms per litre of breath
- create an infringement regime for adult drivers who return an evidential breath test result in the range of 251 to 400 mcg per litre, with proposed penalties of an infringement fee of \$200 and 50 demerit points (There would be no right to request a blood test in these circumstances.)

- set a higher infringement fee of \$500 plus 50 demerit points, plus the costs of the blood test, for adult drivers who fail or refuse to undergo the breath test, and whose blood test results are in the infringement range (51 to 80 mg per 100 ml)
- address a loophole in the Act regarding drivers who cannot give blood samples for medical or physical reasons, by allowing prosecution of a driver for refusing to permit a blood specimen to be taken on a subsequent occasion, if a required blood specimen again cannot be taken for physical or medical reasons.

### **Presumption that driver has refused to give blood specimen**

We recommend an amendment to clause 6, which would introduce the presumption that a driver had refused to permit a blood specimen to be taken if blood had been required on a previous occasion but he or she was medically or physically unable to provide it. We recommend making it clear in new section 60(3C) that a defendant could submit proof to challenge the presumption that they refused to permit the blood to be taken.

We also recommend extending the coverage of new section 60(3C) to ensure the presumption would also apply to a person who was required to give a blood specimen under section 72(1)(e) (which relates to persons who fail to satisfactorily complete a compulsory impairment test).

Section 64(1) provides a defence if the court is satisfied, on the evidence of a medical practitioner, that the taking of a blood specimen would have been prejudicial to the defendant's health. We recommend inserting new clause 6A, to clarify the relationship between that defence and the presumption in new section 60(3C), so that the defence would not be available if the presumption applied.

### **Paying the costs of the blood test**

#### **Increased infringement fee for adults who fail to undergo breath test**

We recommend removing clause 7, section 67(1A) from the bill as introduced, replacing it with new section 67(1A), and amend-

ing schedule 2. These amendments would increase from \$500 to \$700 the infringement fee for adult drivers who failed or refused to undergo the breath test and whose blood alcohol level was found to be in the infringement range. However, no separate fee for the blood test and associated medical expenses would be payable in this case.

### **Recovery of blood test costs from others**

We recommend further amendments to clause 7 to require all other drivers who elect or are required to provide a blood specimen to pay for the costs of their blood tests, regardless of the test results. This would mean inserting a new section 67(1) to replace existing section 67(1) in the Act. Under our recommended new subsection 67(1B), payment of blood test costs for those who went on to be convicted of a criminal drink-driving offence would continue to be ordered by the court as part of the sentence; while for those who were not convicted, the blood test costs would be a civil debt. (Those who failed or refused to undergo a breath test, and whose blood test results were in the infringement range, would be excluded by our recommended new section 67(1A), being instead subject to a \$700 infringement fee.)

We also recommend specifying in new section 67(1C) that drivers with a pre-existing medical condition or disability, or an injury that precluded them from taking the evidential breath test, and those who had a blood test taken at a hospital or in a doctor's surgery, could have the blood test costs waived if their test results were under the legal limit.

### **Advice that must be given to drivers**

We recommend amending clause 8 so that all drivers who were required to undergo a breath test would have to be informed of the possible consequences, including the possibility that they might be liable for the blood test costs whether or not the test result showed that an offence had been committed.

Further, we recommend inserting new subclause 10(2) to require similar information to be given to drivers who have taken a breath test, failed it, and have the right to elect a blood test (new section 72(1D)); and to drivers required to undergo a blood test under section 72(1)(c), (d), or (e) (new section 72(1E)).

We consider that whether the results of a blood test should be admissible in court, even if the required advice was not given to the driver, should be a matter for the court to decide under section 30 of the Evidence Act 2006. We therefore recommend removing clause 8, new section 69(1B). However, under new section 67(1)(a)(ii), drivers would not have to pay the costs of the blood test if they have not been advised, under proposed new section 69(4A)(d), that they might be liable to pay these costs.

### **Procedure for dealing with blood specimens**

In clause 11, we recommend replacing the phrase “reminder notice” with “infringement notice”. This would set an earlier start for the period during which defendants might organise a private blood analysis. The service of an infringement notice constitutes the start of proceedings, so it is a more appropriate starting point than the service of a reminder notice.

### **Ministry review of penalties for drink-driving offences**

Cabinet has asked the Ministry of Transport to review the penalties for criminal drink-driving offences (over 80 mg of alcohol per 100 ml of blood, and over 400 mcg per litre of breath). The review will include an examination of section 61(1), which concerns drivers with blood alcohol levels over the criminal offence threshold of 80 mg per 100 ml of blood and 400 mcg per litre of breath, who cause injury or death. We encourage the Ministry to publicise this review so that members of the public are aware of it.

## **Appendix**

### **Committee process**

The Land Transport Amendment Bill was referred to the committee on 3 December 2013. The closing date for submissions was 14 February 2014. We received and considered 106 submissions from interested groups and individuals. We heard 21 submissions.

We received advice from the Ministry of Transport.

### **Committee membership**

David Bennett (Chairperson)

Chris Auchinvole

Carol Beaumont

Dr Cam Calder

Darien Fenton

Simon O'Connor

Denise Roche

Mike Sabin

Phil Twyford

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**Land Transport Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

text deleted unanimously

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*Hon Gerry Brownlee*

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Government Bill

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**Schedule 1**

**Technical and consequential amendments to principal Act**

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**Schedule 2**

**Consequential amendments to Land Transport (Offences and Penalties) Regulations 1999**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Land Transport Amendment Act **2013**.

**2 Commencement**

This Act comes into force on **1 December 2014**.

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**3 Principal Act**

This Act amends the Land Transport Act 1998 (the **principal Act**).

**Part 1**

**Amendments to principal Act**

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**4 Section 11 amended (Drivers not to exceed specified alcohol limits)**

(1) In section 11(a), replace “400” with “250”.

(2) In section 11(b), replace “80” with “50”.

**5 Section 56 amended (Contravention of specified breath or blood-alcohol limit)**

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(1) After section 56(1), insert:

- “(1A) A person commits an infringement offence if the person drives or attempts to drive a motor vehicle on a road while the proportion of alcohol in the person’s breath, as ascertained by an evidential breath test subsequently undergone by the person under section 69, exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath.” 5
- (2) After section 56(2), insert:
- “(2A) A person commits an infringement offence if the person drives or attempts to drive a motor vehicle on a road while the proportion of alcohol in the person’s blood, as ascertained from an analysis of a blood specimen subsequently taken from the person under section 72(1)(c) or 73, exceeds 50 milligrams of alcohol per 100 millilitres of blood but does not exceed 80 milligrams of alcohol per 100 millilitres of blood.” 10 15
- “(2B) A person commits an infringement offence if—
- “(a) the person fails or refuses to undergo an evidential breath test after ~~being~~having been required to do so under section 69; and
- “(b) analysis of a blood specimen subsequently taken from the person under section 72(1)(a) indicates that the person drove or attempted to drive a motor vehicle on ~~the a~~ road while the proportion of alcohol in the person’s blood exceeded 50 milligrams of alcohol per 100 millilitres of blood but did not exceed 80 milligrams of alcohol per 100 millilitres of blood.” 20 25
- 6 Section 60 amended (Failure or refusal to permit blood specimen to be taken or to undergo compulsory impairment test)**
- After section 60(3A), insert: 30
- “(3B) **Subsection (3C)** applies to a person who—
- “(a) is required to permit a blood specimen to be taken under section 72(1)(~~a~~) ~~or (b)(a), (b), or (e)~~; and
- “(b) when required, on a previous occasion, to permit a blood specimen to be taken under section 72(1)(~~a~~) ~~or (b)(a), (b), or (e)~~, was medically or physically unable to provide a blood specimen. 35

“(3C) A person described in **subsection (3B)** who is medically or physically unable to provide a blood specimen is presumed, in the absence of proof to the contrary, to have refused to permit a blood specimen to be taken.”

**6A Section 64 amended (Defences)**

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After section 64(1), insert:

“(1AA) Subsection (1) is subject to **section 60(3B) and (3C)**.”

**7 Section 67 amended (Blood test fee)**

(1) After section 67(1), insert:

“(1A) A person who commits an infringement offence against **section 56(2A) or (2B)** is liable to pay any blood test fee that applied on the day on which the offence was committed and any associated medical expenses; and the blood test fee and any associated medical expenses are deemed to be an additional infringement fee imposed on the person for the offence.” 10

(2) In section 67(2), replace “subsection (1)” with “subsections (1) and **(1A)**”.

(3) In section 67(3), replace “subsection (1)” with “subsections (1) and **(1A)**”.

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(1) Replace section 67(1) with:

“(1) The following persons who undergo a blood test are liable to pay the blood test fee that applied on the date of that test and any associated medical expenses:

“(a) any person who—

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“(i) elects or is required to undergo the blood test under section 70A(1) or 72(1); and

“(ii) before undergoing the blood test is advised in accordance with **section 69(4A)(d), 72(1D), or 72(1E)**:

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“(b) any person who undergoes a blood test under section 73.

“(1A) **Subsection (1)** does not apply if the result of the blood test indicates that the person has committed an infringement of-  
fence against **section 56(2B)**.”

“(1B) The blood test fee and any associated medical expenses payable by a person under **subsection (1)**,—

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- “(a) in the case of a person who is convicted of an offence against any of sections 56(2), 57(2), 57AA, 57A, 58, 61(1)(b), 61(2), and 62, are deemed to be a fine imposed on the conviction of the person for that offence; and
- “(b) in all other cases, are recoverable from the person as a debt due to the Crown. 5
- “(1C) An enforcement officer may waive or refund the blood test fee and any associated medical expenses payable or paid by a person under **subclause (1)** if—
- “(a) the result of the blood test does not indicate that the person contravened a specified blood-alcohol limit; and 10
- “(b) the blood test—
- “(i) was taken under section 72(1)(a) and the enforcement officer is satisfied, on the evidence of a medical practitioner, that the person’s failure or refusal to undergo an evidential breath test was because of — 15
- “(A) a pre-existing medical condition or pre-existing disability that precluded undergoing the test; or 20
- “(B) an injury, sustained in a motor vehicle accident that gave rise to the obligation to undergo the test; or
- “(ii) was taken under section 73.”
- 8 Section 69 amended (Who must undergo evidential breath test)** 25
- ⊕ After section 69(1); insert:
- “(1A) If a person who is required to undergo an evidential breath test under this section fails or refuses to do so, an enforcement officer must, without delay, advise the person— 30
- “(a) that if the person continues to fail or refuse to undergo the evidential breath test, the person will be required to undergo a blood test under section 72(1)(a); and
- “(b) that if the blood test establishes that the person has committed an offence against this Act, the person will be liable to pay a blood test fee and associated medical expenses; and 35

- “(c) that if the result of the blood test indicates that the proportion of alcohol in the person’s blood exceeds 80 milligrams of alcohol per 100 millilitres of blood, the person may be charged with an offence against section 56(2); and 5
- “(d) that if the result of the blood test indicates that the proportion of alcohol in the person’s blood exceeds 50 milligrams of alcohol per 100 millilitres of blood, but does not exceed 80 milligrams of alcohol per 100 millilitres of blood, the person may be charged with an infringement offence under **section 56(2B)**; and 10
- “(e) of the infringement fee payable for a breach of **section 56(2B)**;
- “(1B) The result of a blood test is not admissible in evidence in proceedings for an offence against this Act if the advice referred to in **subsection (1A)** is not provided.” 15
- (1) After section 69(4), insert:
- “(4A) An enforcement officer who requires a person to undergo an evidential breath test under subsection (4) must, without delay, advise the person— 20
- “(a) that if the person fails or refuses to undergo the evidential breath test, the person will be required to permit the taking of a blood specimen under section 72(1)(a); and
- “(b) that if the result of a blood test indicates the presence of alcohol in the person’s blood the person may be issued with an infringement offence notice or charged with an offence, depending on the proportion of alcohol; and 25
- “(c) of the infringement fee payable for a breach of **section 56(2B)**; and
- “(d) that the person may be liable to pay a blood test fee and associated medical costs, whether or not the result of the blood test establishes that the person has committed an offence against this Act.” 30
- 9 Section 70A replaced (Right to elect blood test)** 35
- Replace section 70A with:
- “**70A Right to elect blood test**
- “(1) A person has the right, within 10 minutes of being advised by an enforcement officer of the matters specified in section

77(3)(a) (which sets out the conditions of the admissibility of the test), to elect to have a blood test to assess the proportion of alcohol in his or her blood, if the result of that person's evidential breath test appears to be positive, and—

- “(a) the result of the person's evidential breath test indicates that the proportion of alcohol in the person's breath exceeds 400 micrograms of alcohol per litre of breath; or
- “(b) the person is apparently younger than 20; or
- “(c) the person holds an alcohol interlock licence or a zero alcohol licence.

- “(2) A person does not have the right to elect to have a blood test to assess the proportion of alcohol in his or her blood if the result of the person's positive evidential breath test indicates that the proportion of alcohol in the person's breath exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath.
- “(3) **Subsection (2)** does not apply to a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence.”

**10 Section 72 amended (Who must give blood specimen at places other than hospital or surgery)**

- (1) After section 72(1), insert:
- “(1AA) Subsection (1)(b) does not apply in the case of a person (other than a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence) if the result of the evidential breath test under section 69(4) indicates that the proportion of alcohol in the person's breath exceeds 250 micrograms of alcohol per litre of breath but does not exceed 400 micrograms of alcohol per litre of breath.”
- (2) After section 72(1C), insert:
- “(1D) An enforcement officer who advises a person of the matters specified in section 77(3)(a) (which sets out the conditions of the admissibility of an evidential breath test) must also, without delay, advise the person that if the person elects to have a blood test the person may be liable to pay a blood test fee and associated medical costs, whether or not the result of that

blood test establishes that the person has committed an offence against this Act.

“(1E) An enforcement officer who requires a person to permit the taking of a blood specimen under subsection (1)(c), (d), or (e) must advise the person that the person may be liable to pay a blood test fee and associated medical costs, whether or not the result of the blood test establishes that the person has committed an offence against this Act.” 5

**11 Section 74 amended (Procedure for dealing with blood specimens)** 10

Replace section 74(7)(a)(iii) with:

- “(ia) in the case of an infringement offence, the date on which the defendant is served with a ~~reminder~~ infringement notice in respect of the infringement offence; or 15
- “(iii) in any case to which subparagraph (i), (ii), or **(ia)** does not apply, the date on which the defendant is first charged in court with any such offence; and”.

**12 Section 77 amended (Presumptions relating to alcohol-testing)** 20

Replace section 77(3) with:

- “(3) Except as provided in subsections **(3B)** and (4), the result of a positive evidential breath test is not admissible in evidence in proceedings for an offence against any of sections 56 to 62 if— 25
  - “(a) the person who underwent the test is not advised by an enforcement officer, without delay after the result of the test is ascertained,— 25
    - “(i) that the test was positive; and
    - “(ii) of the consequences specified in **subsection (3A)**, so far as applicable, if he or she does not request a blood test within 10 minutes; or 30
  - “(b) the person who underwent the test—
    - “(i) advises an enforcement officer, within 10 minutes of being advised of the matters specified in **paragraph (a)**, that the person wishes to undergo a blood test; and 35
    - “(ii) complies with section 72(2).



- “(3A) The consequences referred to in **subsection (3)(a)(ii)** are—
- “(a) that the positive test could of itself be conclusive evidence to lead to that person’s conviction for an offence against this Act if—
- “(i) the test indicates that the proportion of alcohol in the person’s breath exceeds 400 micrograms of alcohol per litre of breath; or 5
- “(ii) the person is younger than 20 and the proportion of alcohol in the person’s breath exceeds 150 micrograms of alcohol per litre of breath; or 10
- “(iii) the person holds an alcohol interlock licence or a zero alcohol licence:
- “(b) that the positive test could of itself be conclusive evidence that the person has committed an infringement offence against this Act if the person is younger than 20 and the test indicates that the person’s breath contains alcohol but the proportion of alcohol does not exceed 150 micrograms of alcohol per litre of breath. 15
- “(3B) **Subsection (3)** does not apply if the result of a positive evidential breath test indicates that the proportion of alcohol in a person’s breath (other than a person who is apparently younger than 20 or who holds an alcohol interlock licence or a zero alcohol licence) exceeds 250 micrograms of alcohol per litre of breath, but does not exceed 400 micrograms of alcohol per litre of breath.” 20 25

**13 Section 121 amended (Enforcement officer may immobilise vehicle, etc, in specified circumstances)**

In section 121(3), replace “where the result of an evidential breath test undergone by the person indicates that the proportion of alcohol in the person’s breath exceeds 400 micrograms of alcohol per litre of breath,” with “where the person has undergone an evidential breath test and it appears to the enforcement officer that the test is positive,”. 30

**Part 2**  
**Consequential Technical and**  
**consequential amendments**

- 14** **Consequential Technical and consequential amendments to principal Act** 5  
Amend the principal Act as set out in **Schedule 1**.
- 15** **Consequential amendments to regulations**  
Amend the regulations listed in **Schedule 2** as set out in that schedule.
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**Schedule 1**  
**Consequential Technical and  
consequential amendments to principal  
Act**

s 14

<b>Section 2</b>	5
In section 2(1), definition of <b>positive</b> , paragraph (c), replace “400” with “250”.	
<b>Section 57AA</b>	
In section 57AA(1) and (4), replace “400” with “250”.	
In section 57AA(2) and (5), replace “80” with “50”.	
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<b>Section 64</b>	
In section 64(3)(a)(iii), replace “400” with “250”.	
In section 64(3)(b)(iii), replace “80” with “50”.	
<b>Section 69</b>	
In section 69(1)(ab), replace “400” with “250”.	
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<b>Section 71</b>	
<u>In section 71(1), replace “section 69(1)(b)” with “section 69(1)(aa)”.</u>	
<b>Section 79</b>	
In section 79(4)(c)(ii), replace “80” with “50”.	
<b>Section 167</b>	20
In section 167(2)(a)(ii), replace “56(1), 56(2),” with “56, 57,”.	
<b>Section 209</b>	
Repeal section 209(2A), (2B), and (2C).	

**Schedule 2****s 15****Consequential amendments to Land  
Transport (Offences and Penalties)  
Regulations 1999****Schedule 1**

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In Schedule 1, after the item relating to section 55A(2) of the Land Transport Act 1998, insert:

<b>56(1A)</b>	Driving or attempting to drive with breath-alcohol concentration exceeding 250 micrograms but not exceeding 400 micrograms of alcohol per litre of breath	—	—	200	—
<b>56(2A)</b>	Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood	—	—	200	—
<b>56(2B)</b>	Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood, and failing or refusing to undergo evidential breath test when required	—	—	<u>500700</u>	—

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## Land Transport Amendment Bill

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### Schedule 2

In Schedule 2, Part 1, after the third item relating to section 52(1)(c) of the Land Transport Act 1998, insert:

<b>56(1A)</b>	Driving or attempting to drive with breath-alcohol concentration exceeding 250 micrograms but not exceeding 400 micrograms of alcohol per litre of breath	50
<b>56(2A)</b>	Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood	50
<b>56(2B)</b>	Driving or attempting to drive with blood-alcohol concentration exceeding 50 milligrams but not exceeding 80 milligrams of alcohol per 100 millilitres of blood, and failing or refusing to undergo evidential breath test when required	50

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### Legislative history

19 November 2013  
3 December 2013

Introduction (Bill 175–1)  
First reading and referral to Transport and Industrial Relations Committee

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