

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 19 November 1971.

Words struck out by the Committee are shown in italics within bold round brackets; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Gordon

TRANSPORT AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to amend the Transport Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Transport Amendment Act (No. 2) 1971, and shall be read together with and deemed part of the Transport Act 1962* (hereinafter referred to as the principal Act).
- 10 (2) Sections 8 and 9 of this Act shall be deemed to have come into force on the 1st day of April 1971.
- (3) Section 10 of this Act shall be deemed to have come into force on the 1st day of October 1971.
- 15 (4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the date of its passing.

*Reprinted 1967, Vol. 3, p. 2309
Amendments: 1968, No. 48; 1969, No. 8, 137; 1970, No. 136

2. Breath tests—(1) Section 58A of the principal Act (as enacted by section 5 of the Transport Amendment Act 1970) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where—

“(a) An accident has occurred involving any motor vehicle; and

“(b) A constable or traffic officer has good cause to suspect that any person in the motor vehicle would, if he was the driver, have committed any of the offences specified in subsection (1) of this section but the constable or traffic officer is unable to ascertain which of the persons in the motor vehicle at the time of the accident was the driver,—

the constable or traffic officer may require that person to provide forthwith a specimen of his breath for a breath test.”

(2) Section 58A of the principal Act (as so enacted) is hereby further amended—

(a) By inserting in paragraph (a) of subsection (2), after the words “subsection (1)”, the words “or subsection (1A)”:

(b) By inserting in paragraph (b) of subsection (2), after the words “subsection (1)”, the words “or subsection (1A)”:

(c) By inserting in paragraph (c) of subsection (2), after the words “this section”, the words “or, as the case may be, would if he was the driver at the time of the accident have committed such an offence”:

(d) By inserting in subsection (4), after the words “subsection (1)”, the words “or subsection (1A)”.

3. Taking of specimen of blood—Section 58B of the principal Act (as enacted by section 5 of the Transport Amendment Act 1970) is hereby amended by adding the following subsection:

“(16) Any specimen of blood may be taken under this section in any hospital within the meaning of the Hospitals Act 1957 by any registered medical practitioner or by any nurse or other person employed by the Hospital Board and authorised in the normal course of his duties to take blood. In any such case, the provisions of subsections (1), (2), (4), (5), and (13) of this section and of subsection (1) of section 58c of this Act shall apply as if the references in those subsections to a registered medical practitioner were references to a person authorised pursuant to this subsection to

take a specimen of blood or, as the case may require, the person by whom the specimen of blood was taken pursuant to this subsection.”

4. **Special provisions for persons in hospital or under medical treatment**—The principal Act is hereby further amended by repealing section 58b (as enacted by section 5 of the Transport Amendment Act 1970), and substituting the following section:

“58b. (1) Subject to the provisions of this section, no person who is in a hospital or a registered medical practitioner’s surgery or other place for the purpose of receiving medical care or treatment shall be required under section 58A or section 58B of this Act to provide a specimen of breath or to permit a specimen of blood to be taken, unless the constable or traffic officer first notifies the registered medical practitioner in immediate charge of the care or treatment of that person and the registered medical practitioner is satisfied that the giving or taking of such a specimen would not be prejudicial to the proper care or treatment of that person.

“(2) Notwithstanding anything in any other Act or in any rule of law, where—

“(a) Any person is received in any hospital for examination or treatment as a result of an accident involving any motor vehicle; and

“(b) The registered medical practitioner in immediate charge of the examination or treatment of that person believes that—

“(i) That person was the driver of the motor vehicle at the time of the accident; or

“(ii) That person, being a person appearing to be of or over the age of 15 years, was in the motor vehicle at the time of the accident but it is uncertain as to which of the persons in the motor vehicle at the time of the accident was the driver,—

it shall be the duty of the Hospital Board having the control of that hospital and of the Medical Superintendent of that hospital to ensure that *(as soon as practicable after that person has been received in the hospital)* if practicable a specimen of his venous blood is taken in accordance with normal medical procedures, whether or not that person has consented thereto and whether or not he is capable of giving his consent:

“Provided that the provisions of this subsection shall not apply unless and until that person has been examined by a registered medical practitioner and that medical practitioner

is satisfied that the taking of such a specimen of blood would not be prejudicial to the proper care or treatment of that person.

“(3) A specimen of blood may be taken under subsection (2) of this section by any registered medical practitioner or by any nurse or other person employed by the Hospital Board and authorised in the normal course of his duties to take blood. 5

“(4) Any specimen of blood taken under the provisions of subsection (2) of this section shall, after setting aside any portion thereof required for research purposes pursuant to subsection (8) of this section, forthwith be divided into 2 parts, or if it is insufficient to be divided into 2 parts a further specimen of blood may forthwith be taken under the said subsection (2), and each part or specimen shall be placed in separate containers, which shall be sealed. Where any specimen of blood is divided into 2 parts as aforesaid, each such part shall be deemed to be a specimen of blood for the purposes of this Act. 10 15

“(5) Where a constable or traffic officer has good cause to suspect that any person from whom a specimen of blood was taken under subsection (2) of this section has committed any of the offences specified in subsection (1) of section 58A of this Act, being an offence arising out of the driving of the motor vehicle involved in the accident, he may request the Medical Superintendent, or a person nominated for the purpose by the Medical Superintendent, of the hospital at which the specimen of blood was taken to deliver to him the separate containers containing the specimens of blood, and the Medical Superintendent, or person so nominated, shall deliver those containers to the person making the request. 20 25 30

“(6) The provisions of subsections (3) to (15) of section 58D of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to every specimen of blood taken pursuant to subsection (2) of this section, as if— 35

“(a) That specimen had been taken pursuant to the said section 58B; and

“(b) The references to a registered medical practitioner in subsections (4), (5), and (13) of the said section 58B were references to the person by whom the specimen of blood was taken pursuant to subsection (2) of this section; and 40

5 “(c) The reference in subsection (11) of the said section 58B to a specimen of blood provided by the defendant under that section were a reference to a specimen of blood taken from the defendant pursuant to subsection (2) of this section.

10 “(7) Every person commits an offence who, being a person from whom a specimen of blood is required to be taken pursuant to subsection (2) of this section, refuses or fails to permit such a specimen to be taken. The provisions of sub-
15 sections (2) and (3) of section 58c of this Act shall apply with respect to every offence against this subsection as if it were an offence against subsection (1) of the said section 58c, and the provisions of subsection (3) of that subsection shall apply as if the defendant had been required by a constable
15 or traffic officer to permit a specimen of blood to be taken.

20 “(8) Any person specified in subsection (3) of this section may take for research purposes, whether in the hospital by which he is employed or otherwise, a specimen of blood from any person from whom a specimen of blood may be taken pursuant to subsection (2) of this section.

25 “(9) Notwithstanding anything in any other Act or in any rule of law, no proceeding, civil or criminal, shall be taken against the Hospital Board or against any person in respect of the taking of a specimen of blood pursuant to this section, or in respect of the delivery of any specimen of blood to a constable or traffic officer pursuant to this section, on the ground that any person whose consent to the taking of the specimen of blood would have been otherwise required by law if this section had not been enacted has not so consented:

30 “Provided that nothing in this subsection shall apply with respect to any proceeding on the ground of any negligent act or omission in the taking of any such specimen.

35 “(10) In this section the expressions ‘hospital’ and ‘Hospital Board’ have the same meanings as in section 2 of the Hospitals Act 1957.”

New

40 “(11) Except with the consent of the person from whom the specimen of blood was taken evidence as to the proportion of alcohol in any specimen of blood taken pursuant to sub-
section (2) of this section shall not be admissible in any proceedings other than proceedings for any offence specified in subsection (1) of section 58A of this Act.”

5. Penalty for refusing to allow specimen of blood to be taken—Section 30 of the principal Act (as substituted by section 2 of the Transport Amendment Act 1970) is hereby amended by inserting in subsection (3), after paragraph (e), the following paragraph: 5

“(ea) Subsection (7) of section 58D (which relates to the refusal of a person in hospital to allow a specimen of blood to be taken); or”.

6. Defensive driving course—Section 68 of the principal Act is hereby amended by adding to subsection (1) the words “or a defensive driving course of instruction conducted by an instructor approved for the purpose by the Secretary”. 10

7. Regulations as to seat belts—Section 77 of the principal Act is hereby amended by adding to subsection (1) (as amended by section 17 of the Transport Amendment Act 1968) the following paragraph: 15

“(y) Requiring motorcars and such other classes of motor vehicles as are specified in the regulations to be fitted with seat belts of a type approved by the Secretary by notice in the *Gazette*; requiring that in the case of vehicles first registered on or after the 1st day of July 1972 the seat belts shall be three-point lap and diagonal belts or harnesses of a type so approved; authorising the Secretary to approve the fitting of different types of seat belts for particular vehicles or classes of vehicles where it is not practicable to fit three-point lap and diagonal belts or harnesses; requiring persons 15 years of age or over occupying a seat for which a seat belt is provided to wear the seat belt while the motor vehicle is moving forward; and authorising the Secretary to exempt specified persons or classes of persons and specified vehicles or classes of vehicles from the requirements of the regulations.” 20 25 30 35

8. Payment of motor spirits duty into National Roads Fund—(1) Section 187 of the principal Act (as substituted by section 24 of the Transport Amendment Act (No. 2) 1969) is hereby amended by omitting from subsection (2) the words “as to 17.1 cents thereof to the credit of the National Roads Fund, and as to 1 cent thereof to the credit of the Consolidated Revenue Account”, and substituting the words “to the credit of the National Roads Fund”. 40

(2) The principal Act is hereby further amended—

- 5 (a) By omitting from subsection (5) of section 188 (as substituted by section 24 of the Transport Amendment Act (No. 2) 1969) the words “and out of the Consolidated Revenue Account to the extent specified in subsection (6) of this section”:
- 10 (b) By omitting from subsection (6) of section 188 (as so substituted) the words “or the Consolidated Revenue Account, as the case may be, to the extent specified in column 3 or, as the case may be, column 4 of that table”:
- (c) By omitting from subsection (6) of section 188 (as so substituted) column 3 and column 4 of the table set out in that subsection.

15 **9. Payment of mileage tax into National Roads Fund**—Section 190 of the principal Act (as substituted by section 24 of the Transport Amendment Act (No. 2) 1969) is hereby amended by omitting from subsection (7) all words after the words “shall be credited”, and substituting the words “to the
20 National Roads Fund”.

10. Refund of motor spirits duty—Section 188 of the principal Act (as so substituted) is hereby further amended by omitting from the table set out in subsection (6) the last 3 items in that table, and substituting the following words:

25 “Used otherwise than as fuel in motor vehicle | 18.1”