

2007 Bill 49

Third Session, 26th Legislature, 56 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 49

TRAFFIC SAFETY AMENDMENT ACT, 2007

MR. JOHNSTON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 49
Mr. Johnston

BILL 49

2007

TRAFFIC SAFETY AMENDMENT ACT, 2007

(Assented to , 2007)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cT-6

1 The *Traffic Safety Act* is amended by this Act.

2 Section 1(1) is amended

(a) by adding the following after clause (r):

(r.1) “intersection safety device” means a device installed or erected at an intersection with a traffic control signal that is capable of photographing a vehicle and recording data related to the traffic control signal and the vehicle, and of being used for or in connection with establishing the speed of the vehicle while the vehicle is approaching and proceeding through the intersection;

(b) by repealing clause (kk).

3 Section 2(2)(b) is amended by striking out “of red light traffic enforcement devices” and substituting “of intersection safety devices”.

Explanatory Notes

1 Amends chapter T-6 of the Revised Statutes of Alberta 2000.

2 Definitions. Section 1(1)(kk) presently reads:

1(1) In this Act,

(kk) “red light traffic enforcement device” means a device installed or erected at an intersection with a traffic control signal that is capable of photographing a vehicle and recording data related to the vehicle and traffic control signal;

3 Section 2(2) presently reads:

(2) For the purposes of this Act, the Minister may appoint or designate persons

(a) as engineers, and

4 Section 28 is repealed.

5 Section 39 is amended

(a) in subsection (5)(a)

- (i) by adding “drove a motor vehicle” after “person”;**
- (ii) by striking out “, drove a motor vehicle, or” and substituting “at any time within 3 hours after having driven a motor vehicle, or”;**

(b) in subsection (6)(a) by adding “at any time within 3 hours after having driven a motor vehicle” after “100 millilitres of blood”.

6 Division 4 of Part 2 is repealed and the following is substituted:

Division 4 Judicial Review

Judicial review

47.1(1) Subject to sections 32 and 46 and subsection (2), no decision or order of the Board shall be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be made, process entered or proceedings taken in any court, whether by way of certiorari, injunction, declaratory judgment, prohibition, mandamus, quo warranto, application to quash or set aside or otherwise, to question, review, prohibit or restrain any decision or order of the Board or any of its proceedings.

(b) as testers of speedometers on motor vehicles, of tuning forks, of red light traffic enforcement devices and of other devices.

4 Section 28 presently reads:

28 Subject to sections 48 and 49, every decision or order of the Board is final.

5 Section 39 presently reads in part:

(5) If, after conducting an appeal under this section, the Board is satisfied that

(a) the person having consumed alcohol in such a quantity that the concentration of alcohol in that person's blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, drove a motor vehicle, or

(6) If, after conducting an appeal under this section, the Board is satisfied

(a) that the person did not drive a motor vehicle having consumed alcohol in such a quantity that the concentration of alcohol in that person's blood exceeded 80 milligrams of alcohol in 100 millilitres of blood, or

6 Privative clause.

(2) A decision or order of the Board may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus if the originating notice is filed with the Court and served on the Board no later than 30 days after the date of the decision or order or the date a copy of the decision or order and reasons in respect of it have been received by the applicant, whichever is later.

(3) On an application for judicial review under subsection (2), the standard of review is patent unreasonableness.

7 Section 66(4) is repealed and the following is substituted:

(4) If a driver or an owner of a vehicle is given a direction under subsection (1)(f), a peace officer may seize the licence plate and certificate of registration issued in respect of that vehicle, and in the case of a vehicle in a prescribed class of commercial vehicles, a peace officer may seize the certificate of registration or a copy of the certificate of registration, and hold the licence plate and certificate of registration or copy of the certificate of registration, as the case may be, until the vehicle or its equipment, or both, have been, in accordance with the direction,

- (a) rendered safe to operate;
- (b) repaired, serviced, altered or otherwise dealt with so that they meet the requirements of this Act;
- (c) repaired in accordance with the directions of the peace officer.

8 Section 67(1)(a) and (6)(d) are amended by adding “, or in the case of a vehicle in a prescribed class of commercial vehicles, a copy of the certificate of registration,” after “certificate of registration”.

7 Section 66(4) presently reads:

(4) If a driver or an owner of a vehicle is given a direction under subsection (1)(f), a peace officer may seize the licence plate and certificate of registration issued in respect of that vehicle and hold the licence plate and certificate of registration until the vehicle or its equipment, or both, have been, in accordance with the direction,

- (a) rendered safe to operate;*
- (b) repaired, serviced, altered or otherwise dealt with so that they meet the requirements of this Act;*
- (c) repaired in accordance with the directions of the peace officer.*

8 Section 67(1) and (6)(d) presently read:

67(1) Where

- (a) a person is given a direction under section 66, a person's vehicle is detained for the purposes of section 66 or a person's licence plate and certificate of registration are seized under section 66, and*

9 Section 116(l) is amended by striking out “red light traffic enforcement devices” and substituting “intersection safety devices”.

10 Section 163 is amended

(a) in subsection (1)

- (i) in clause (a)(ii) by striking out “a red light traffic enforcement device,” and substituting “an intersection safety device,”;**
- (ii) in clause (b)(iii) by striking out “a red light traffic enforcement device” and substituting “an intersection safety device”;**

(b) in subsection (3)

- (i) by striking out “the Rules of the Road” and substituting “a provision of this Act or the regulations”;**
- (ii) by adding “the speed at which the motor vehicle was travelling or” after “relating to”;**
- (iii) in clause (a) by striking out “a red light traffic enforcement device” and substituting “an intersection safety device”.**

- (b) *the person disputes the direction, detention or seizure in whole or in part,*

the person may apply to the Court of Queen's Bench for an order granting relief under subsection (6).

(6) On hearing an application, the Court may do one or more of the following:

- (d) *direct that the seized licence plate and certificate of registration be returned;*

9 Section 116 presently reads in part:

116 The Minister may make regulations

- (l) *respecting the requirements for and the use of red light traffic enforcement devices.*

10 Section 163 presently reads:

163(0.1) In this section, "recording device" means a device that is installed by the manufacturer of a motor vehicle as part of the original vehicle equipment, or by or at the request of the owner of a motor vehicle, that is capable of recording or transmitting information regarding any one or more of the following:

- (a) *the speed at which the motor vehicle is travelling;*
- (b) *the direction in which the motor vehicle is travelling;*
- (c) *a history of where the motor vehicle has travelled;*
- (d) *steering performance;*
- (e) *brake performance, including, but not limited to, whether brakes were applied before a collision;*
- (f) *whether the driver was wearing a complete seatbelt assembly;*
- (g) *the number of hours a commercial vehicle has been operating;*
- (h) *a collision in which the motor vehicle has been involved.*

(1) In any prosecution under this Act or a bylaw, a certificate

(a) stating the result of

(i) a test of

(A) the speedometer of a vehicle identified in the certificate,

(B) a device identified in the certificate and used for determining the accuracy of a radar device, or

(C) any other device identified in the certificate and used for or in connection with establishing the speed of vehicles,

or

(ii) a test of a red light traffic enforcement device,

(b) bearing a date on it that is not more than,

(i) in the case of a device referred to in clause (a)(i)(B), one year before or after the day on which the offence was charged,

(ii) in the case of a speedometer or other device used for or in connection with establishing the speed of vehicles, 180 days before or after the day on which the offence was charged, or

(iii) in the case of a red light traffic enforcement device, 30 days before or after the day on which the offence was charged,

and

(c) purporting to be signed by a tester who is appointed under this Act to test devices of the type stated in the certificate to have been tested,

shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the signature or appointment as a tester of the person signing the certificate.

(2) In any prosecution under this Act or a bylaw, a certificate purporting to be signed by a meteorologist and stating the time of sunrise or the time of sunset in any area on any day shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate without proof of the signature or qualifications of the person signing the certificate.

(3) In any proceedings under which a person is charged with failing to comply with the Rules of the Road relating to red lights shown at an intersection by a traffic control signal,

(a) the evidence of any person involved in the installation, operation or use of a red light traffic enforcement device and the issuance of a violation ticket in respect of that failure to comply may be given by affidavit;

(b) an affidavit referred to in clause (a) is, in the absence of evidence to the contrary, proof, in the absence of evidence to the contrary, as to the facts stated in the affidavit;

(c) a copy of an affidavit referred to in clause (a) must be served on the defendant by ordinary mail at that person's latest address, as indicated on the records of the Registrar, at least 14 days before the day of the hearing;

(d) the defendant may, with leave of the court, require the attendance of any person giving evidence by affidavit pursuant to clause (a) for the purpose of cross-examination.

(4) In any proceedings in respect of a charge that a person has failed to comply with this Act,

(a) the evidence of any person involved in the manufacture, installation or operation of, or analysis or interpretation of data collected, reported or transmitted by, a recording device located in a motor vehicle may be given by affidavit;

(b) an affidavit referred to in clause (a) is proof, in the absence of evidence to the contrary, of the facts stated in the affidavit;

(c) a copy of an affidavit referred to in clause (a) must be served on the defendant by ordinary mail at that person's latest address, as indicated on the records of the Registrar, at least 14 days before the day of the hearing;

11 Section 167(1)(b) is amended by adding “and, in the case of a vehicle in a prescribed class of commercial vehicles, either the subsisting certificate of registration or a copy of the certificate of registration” **after** “attached to the motor vehicle”.

12 Section 184 is amended by striking out “Nothing” **and substituting** “Subject to section 187, nothing”.

13 Section 187 is amended

(a) by adding the following before subsection (1):

(0.1) In this section,

- (d) *the defendant may, with leave of the court, require the attendance of any person giving evidence by affidavit pursuant to clause (a) for the purpose of cross-examination.*

11 Section 167(1) presently reads:

167(1) On the request of a peace officer, a person driving or otherwise having the care or control of a motor vehicle or trailer shall produce to the peace officer for inspection the following documents as requested by the peace officer:

- (a) *the person's subsisting operator's licence;*
- (b) *the subsisting certificate of registration issued in respect of the motor vehicle and any trailer attached to the motor vehicle;*
- (c) *the subsisting financial responsibility card issued in respect of that motor vehicle;*
- (d) *the customs permit issued in respect of the motor vehicle where a customs permit has been obtained in respect of the motor vehicle's entry into Canada.*

12 Section 184 presently reads:

184 Nothing in this Act shall be construed to curtail or abridge the right of any person to commence and maintain an action for damages by reason of any injuries to a person or any property resulting from

- (a) *the negligence of the owner or driver of any motor vehicle, or*
- (b) *the negligence of any agent or employee of the owner of the motor vehicle.*

13 Section 187 presently reads:

187(1) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who, at the time that the loss or damage occurred,

- (a) *was driving the motor vehicle, and*

- (a) “lender” means a person who holds a security interest in a motor vehicle through a written security agreement, who under that agreement has lent money to a person in respect of the motor vehicle and who is not in possession of the motor vehicle but retains title to the motor vehicle, or a person to whom the lender has assigned the agreement;
- (b) “lessor” means a person who by agreement, in the ordinary course of the person’s business, leases or grants exclusive use of a motor vehicle to another person for a term of more than 30 days or otherwise grants exclusive use of a motor vehicle to another person for a period of more than 30 days, and who is not in possession of the motor vehicle, or a person to whom the lessor has assigned the agreement;
- (c) “motor vehicle liability policy” means a motor vehicle liability policy under the *Insurance Act*;
- (d) “security agreement” means a security agreement under the *Personal Property Security Act*;
- (e) “security interest” means a security interest under the *Personal Property Security Act*;
- (f) “seller” means a person who holds a security interest in a motor vehicle through a written security agreement and sells the motor vehicle to another person under a contract in writing but retains title to the motor vehicle until the purchaser has carried out the terms of the contract and who is not in possession of the motor vehicle, or a person to whom the seller has assigned the security agreement or the contract.

(b) by adding the following after subsection (2):

(2.1) Notwithstanding any other provision in this Division except subsections (5) and (6), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, the maximum amount for which a lender, lessor or seller of the motor vehicle is liable in respect of the same incident in its capacity as a lender, lessor or seller

(b) was living with and as a member of the family of the owner of the motor vehicle,

is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle,

(d) to be employed as the agent or employee of the owner of the motor vehicle, and

(e) to be driving the motor vehicle in the course of that person's employment.

(2) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle, and

(b) was in possession of the motor vehicle with the consent, expressed or implied, of the owner of the motor vehicle,

is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle,

(d) to be employed as the agent or employee of the owner of the motor vehicle, and

(e) to be driving the motor vehicle in the course of that person's employment.

(3) Notwithstanding subsections (1) and (2), nothing in this section relieves any person who is deemed to be the agent or employee of the owner and to be driving the motor vehicle in the course of that person's employment from liability for the loss or damage.

of the motor vehicle is the amount determined under subsection (4) less any amounts that

- (a) are recovered for loss or damage under the third party liability provisions of contracts evidenced by a motor vehicle liability policy issued to a person other than a lender, lessor or seller,
 - (b) are in respect of the use or operation of the motor vehicle, and
 - (c) are in respect of the same incident.
- (c) in subsection (3) by striking out “subsections (1) and (2)” and substituting “subsections (1) to (2.1)”;**
- (d) by adding the following after subsection (3):**
- (4)** The maximum amount for which a lender, lessor or seller of a motor vehicle is liable for the purposes of subsection (2.1) is the greatest of
- (a) \$1 000 000,
 - (b) the amount of third party liability insurance required by law to be carried in respect of the motor vehicle, and
 - (c) the amount established, or determined in the manner prescribed, by regulation.
- (5)** Subsection (2.1) does not apply
- (a) in respect of amounts payable by a lender, lessor or seller other than by reason of vicarious liability imposed by this section, or
 - (b) to prescribed lenders, lessors or sellers or motor vehicles, or prescribed classes of lenders, lessors or sellers or motor vehicles.
- (6)** This section applies only in relation to loss or damage sustained on or after the date this section comes into force.

- (7) The Minister may make regulations
- (a) establishing amounts payable, or prescribing the manner of determining amounts payable, for the purposes of subsection (4)(c);
 - (b) prescribing lenders, lessors and sellers and motor vehicles or classes of lenders, lessors and sellers and motor vehicles for the purposes of subsection (5)(b).
- (8) The Minister may make different regulations under subsection (7)(b) in relation to lenders, lessors and sellers and motor vehicles, or classes of lenders, lessors and sellers and motor vehicles, for different circumstances.

14 The *Insurance Act* is amended in section 650 by adding the following after subsection (3):

- (4) Despite subsection (1), the Lieutenant Governor in Council may make regulations
- (a) respecting the priority of payment of insurance held by a lessor as defined in section 187 of the *Traffic Safety Act* or a rental car company in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the lessor or rental car company;
 - (b) defining terms for the purposes of this section;
 - (c) where regulations are made under clause (a) or (b), modifying any provision of this Act to the extent that the Lieutenant Governor in Council considers necessary in order to carry out the purpose and intent of this section.

15 Sections 2, 3, 7, 8, 9, 10, 11, 12, 13 and 14 come into force on Proclamation.

14 Related amendment to RSA 2000 cI-3.

15 Coming into force.

