

No. 2

REPUBLIC OF KIRIBATI

TRAFFIC ACT 2002

TRAFFIC (ROAD SAFETY) REGULATIONS 2004

PART I— PRELIMINARY

RECEIVED

1. Citation

These Regulations may be cited as the Traffic (Road Safety) Regulations 2004.

BY: _____

2. Interpretation

In these Regulations, unless the context otherwise requires, -

'Act' means the Traffic Act 2002, and includes these Regulations;

'approved breathalyzer' means a speed measuring device of a type approved by order of the Commissioner;

'approved radar device' means a speed measuring device of a type approved by order of the Commissioner;

'authorized breathalyzer testing officer' means a person authorized in writing by the Commissioner to calibrate breathalysers;

'authorized radar device testing officer' means a person authorized in writing by the Commissioner to calibrate radar devices;

'breathalyzer' means any instrument of a type designed to ascertain the concentration of alcohol present in a person's blood by analysis of that person's breath;

'breath analysis' means a test to ascertain the concentration of alcohol present in a person's blood by analysis of that person's breath using a breathalyzer;

'Commissioner' means the Commissioner of Police;

'radar detecting device' means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of detecting electromagnetic radiations from an approved radar device; and
'radar jamming device' means a device designed or apparently designed to be fitted to or carried in a motor vehicle for the purpose of interfering with the receiving by an approved radar device of reflected electromagnetic radiations.

PART II — BREATH ANALYSIS

3. Power to conduct random breath testing

- (1). A Police officer may require any person found by the officer, or who the officer suspects on reasonable grounds was, during the last preceding two hours, driving or attempting to drive a motor vehicle to provide a specimen of breath for breath analysis.
- (2). Without limiting any other power or authority, a Police officer may, for the purpose of this section, request or signal the driver of a motor vehicle to stop the vehicle.
- (3). A person must comply with any request or signal made or given to the person by a Police officer under sub-regulation (2).

Penalty: A fine of not more than \$100.

- (4). When a person is required by a Police officer to provide a specimen of breath under sub-regulation (1), that person must not —
 - (a) refuse or fail to provide a specimen of breath in accordance with the directions of the officer; or
 - (b) refuse or fail to comply with any reasonable instruction given by the officer.

Penalty: A fine of not more than \$100 or imprisonment for three months or both.

- (5). It is a defence to a prosecution for an offence under sub-regulation (4)(a) if the defendant satisfies the court that the defendant was unable on medical grounds, at the time the defendant was required to do so, to provide a specimen of breath.
- (6). Any person who commits an offence under this regulation may be arrested by any Police officer without warrant.

4. Procedures for breath analysis

- (1). The Commissioner may authorise a Police officer who is, in the opinion of the Commissioner—
 - (a). Trained in the use of an approved breathalyzer; and
 - (b). Capable of using that instrument correctly, to use that instrument for the purpose of the Act.
- (2). A person must not carry out a breath analysis for the purpose of the Act unless the person —
 - (a). Is a Police officer;
 - (b). Uses an approved breathalyzer;
 - (c). Is authorized by the Commissioner under sub-regulation (1) to use the instrument; and
 - (d). Complies with these Regulations relating to the proper use of the instrument.
- (3). A breathalyzer must not be used to carry out a breath analysis unless an authorized breathalyzer and, if satisfied as to its accuracy, has issued a certificate in Form 1 (as set out in the Schedule) to that effect.
- (4). A person must not carry out a breath analysis unless satisfied that the person required to provide a specimen of breath has not consumed alcohol within the period of 15 minutes immediately preceding the provision of the specimen. The person required to provide a specimen of breath may be instructed to remain in the company of the person conducting the breath analysis until such time as the breath analysis has been completed.
- (5). The person operating the breathalyzer must provide a fresh mouthpiece for use by each person required to provide a specimen of breath and use only a mouthpiece which, until required for taking a specimen of breath, has been kept in a sealed container.

- (6). A person who provides a specimen of breath under these Regulations must do so by exhaling continuously into the breathalyzer to the satisfaction of the person operating it.
- (7). If a person is required under these Regulations to provide a specimen of breath for breath analysis, the person is taken not to have provided the specimen unless it—
 - (a). Is sufficient to enable the analysis to be carried out; and
 - (b). Is provided in a way that enables the objective of the analysis to be satisfactorily achieved.

5. Procedure where blood alcohol concentration exceeds 0.08

- (1). This regulation shall apply where, following an initial breath analysis conducted pursuant to these Regulations, the breathalyzer by means of which the analysis was conducted indicates that the concentration of alcohol in the blood of the person providing the specimen of breath exceeds 0.08%.
- (2). The person conducting the breath analysis shall forthwith inform the person of the result of the analysis, and shall show to the person the result of the analysis as recorded on the display of the breathalyzer.
- (3). A Police officer may arrest the person without warrant and take the person, or cause the person to be taken, with such force as may be necessary, to a Police station or some other place as the officer considers desirable, and there detain the person, or cause the person to be detained, for the purpose of conducting a further breath analysis pursuant to regulation 6.
- (4). The person conducting the initial breath analysis shall, as soon as is practicable, complete in duplicate Part 1 and Form 2 (as set out in the Schedule), and such form shall accompany the person arrested under sub-regulation 4, and may be conducted at or near a Police station or such other place as the officer arrested under sub-regulation (3) to the place to which such person is taken, and shall be given to the person who is to conduct the further breath analysis.

6. Breath analysis following arrest

- (1). A Police officer may require a person who has been arrested under regulation 5 to submit to a further breath analysis in accordance with the directions of the officer.
- (2). A further breath analysis under sub-regulation (1) must be conducted in accordance with the procedure set out in regulation 4, and may be conducted at or near a Police station or such other place as the officer considers desirable.
- (3). The person conducting the further breath analysis (who may be the same person as conducted the initial breath analysis) must use a different breathalyzer to the one used for the initial breath analysis, and the further breath analysis shall not be carried out unless at least 20 minutes have passed since the initial breath analysis was carried out.
- (4). A person must not, when required by a Police officer to provide a specimen of breath under sub-regulation (1), refuse or fail to provide a specimen of breath in accordance with the directions of the officer.

Penalty: A fine of not more than \$100 or imprisonment for three months or both.

- (5). It is a defence to a prosecution for an offence under sub-regulation (4) if the defendant satisfies the court that the defendant was unable on medical grounds, at the time the defendant was required to do so, to provide a specimen of breath.
- (6). Following a further breath analysis conducted in accordance with the provisions of these Regulations the person conducting the further analysis shall forthwith inform the person of the result of the analysis, and shall show to the person providing the specimens of breath.
- (7). The person conducting the further breath analysis shall, soon as is practicable, complete in duplicate Part 2 of the form provided to that person pursuant to regulation 5(4), and provide a copy of the completed form to the person providing the specimens of breath.

- (a). Refuse to submit to a sobriety test in accordance with the directions of the officer; or
- (b). Refuse or fail to comply with any reasonable instruction given by the officer.

Penalty: A fine of not more than \$100 or imprisonment for three months or both.

- (3). Any person who commits an offence under this regulation may be arrested by any Police officer without warrant.
- (4). For the avoidance of doubt, the observations of a Police officer conducting the sobriety test may be used as evidence in any proceedings for an offence against section 39 of the Act.

PART IV — PREVENTION OF VEHICLES USE

11. Prevention of vehicle use by drivers under influence of alcohol or drugs

- (1). If a Police officer is of the opinion that a person who is driving (or about to drive) a motor vehicle is under the influence of alcohol or another drug, the Police officer may —
 - (a). Prohibit the person from driving the vehicle while the person is under the influence of alcohol or that other drug; and
 - (b). Require the person to immediately hand over all ignition or other keys of the motor vehicle in the person's actual possession to
 - (i). The Police officer; or
 - (ii). Another person in the company of the person whom the Police officer is satisfied is responsible and capable of exercising proper control of the motor vehicle; and
 - (c). Take such other steps as, in the opinion of the Police officer, are necessary in order to —
 - (i). Immobilize the motor vehicle; or
 - (ii). Remove the motor vehicle to a place of safety and detain it at that place.
- (2). Sub-regulation (1) does not authorise the confiscation of any keys, or the immobilization of any motor vehicle, for any period that is longer than necessary in the circumstances and in the interest of the person driving (or about to drive) or of any other person or of the public.
- (3). It is lawful for a Police officer to retain any keys that are confiscated under sub-regulation (1), or for any motor vehicle to be immobilized or detained under that sub-regulation, until such time as —
 - (a). The return of the keys or the motor vehicle is requested by a person; and
 - (b). The Police officer to whom the request is made is satisfied that the person making the request is capable of exercising proper control of the motor vehicle.
- (4). A person must not —
 - (a). Contravene any prohibition or requirement made by a Police officer pursuant to sub-regulation (1); or
 - (b). Attempt in any manner to obstruct a Police officer in the exercise of any power conferred on the Police officer by sub-regulation (1).

Penalty: A fine of not more than \$100.

- (5). Any expenses incurred in connection with the immobilization, removal or detention of a motor vehicle pursuant to sub-regulation (1) may be recovered from the person who was driving (or about to drive) the vehicle as a debt due to the Republic.

PART V — SPEED MEASUREMENT

12. Procedures for measuring speed

- (1). The Commissioner may authorise a Police officer who is, in the opinion of the Commissioner—
 - (a). Trained in the use of an approved radar device; and
 - (b). Capable of using that device correctly,to use that instrument for the purposes of the Act.

- (2). A person must not drive a motor vehicle if the vehicle is fitted with or is carrying a radar detecting device or a radar jamming device.
Penalty: A fine of not more than \$100.
- (3). The owner of a motor vehicle which is fitted with or is carrying a radar detecting device or a radar jamming device commits an offence.
Penalty: A fine of not more than \$100.
- (4). It is a defence to a prosecution for an offence under sub-regulation (2) or (3) if the defendant satisfies the Court that, at the time of the alleged offence the defendant did not know, and in the circumstances could not reasonably be expected to have known, that the vehicle was fitted with or was carrying the device concerned.

Dated this 6th day of January, 2005

Anote Tong
Beretitenti
(acting in accordance with the advice of the Cabinet)

Published by exhibition at the Office of the Beretitenti this 6th day of January, 2005

Riteti Maniraka
for Secretary to the Cabinet.

SCHEDULE

Form 1
(Regulation 4(3), Traffic (Road Safety) Regulations 2004)

I,, of, state as follows —

1. I am an authorized breathalyzer testing officer for the purposes of the Traffic (Road Safety) Regulations 2004;
2. On the day of, 20....., I tested the following breathalyzer —
Name of instrument:
Serial number:
3. I am satisfied as to the accuracy of the said breathalyzer.

.....
(Signed)

FORM 2
(Regulations 5(4) and 6(7), Traffic (Road Safety) Regulations 2004)

PART 1

I, _____, state as follows —
Name, rank and serial number

1. I am a member of the Kiribati Police Force authorized by the Commissioner of Police to use a breathalyzer under reg. 4(1) of the Traffic (Road Safety) Regulations 2004 (the Regulations’);
2. At am/pm on the day of, 20..... At
Using the following breathalyzer —
Name of instrument: