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c 13 Highway Traffic Amendment Act, 1985

Ontario

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CHAPTER 13

An Act to amend the Highway Traffic Act

Assented to December 20th, 1985

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

1.—(1) Subsection 7 (3c) of the *Highway Traffic Act*, being chapter 198 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1983, chapter 63, section 2, is repealed and the following substituted therefor:

(3c) Where a permit holder is in default of payment of a fine imposed for a parking infraction, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

No permit validation when fines unpaid
R.S.O. 1980, c. 400

(a) validation of that person's permit; and

(b) issuance of a new permit to that person,

may be refused until the fine is paid.

(3d) Where a person who is not a permit holder is in default of a payment of a fine imposed for a parking infraction, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that the issuance of a permit may be refused to that person until the fine is paid.

No permit issued when fines unpaid

(3e) An order permitted by subsection (3c) does not apply to preclude the holder of more than one permit from receiving validation of a permit, the plate portion of which was not associated with the vehicle involved with the infraction at the time of the infraction.

Exception to subs. (3c)

(2) Subsection 7 (11) of the said Act is repealed and the following substituted therefor:

(11) Notwithstanding section 2 of the *Financial Administration Act*, any person who issues permits on behalf of the Minister, pursuant to an agreement with the Minister, may retain,

Retaining portion of fee
R.S.O. 1980, c. 161

from the fee paid, such amount as is approved by the Minister from time to time.

2.—(1) Subsection 18 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 63, section 7, is repealed and the following substituted therefor:

Issuance
of licence

(2) The Minister may issue a driver's licence to any person who meets the requirements of this Act and the regulations authorizing the person to drive on a highway,

- (a) any motor vehicle within a class or classes of motor vehicles;
- (b) subject to any conditions or endorsements; and
- (c) for the period of time,

prescribed by the regulations and set out or referred to in the licence.

(2) Subsection 18 (2a) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 63, section 7, is repealed and the following substituted therefor:

Retaining
portion
of fee
R.S.O. 1980,
c. 161

(2a) Notwithstanding section 2 of the *Financial Administration Act*, any person who issues licences on behalf of the Minister, pursuant to an agreement with the Minister, may retain, from the fee paid, such amount as is approved by the Minister from time to time.

3.—(1) Subsection 26 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 21, section 4, is repealed and the following substituted therefor:

Suspension
on conviction
for certain
offences

R.S.C. 1970,
c. C-34

(1) The driver's licence of a person who is convicted of an offence,

- (a) under section 203, 204 or 219 of the *Criminal Code* (Canada) committed by means of a motor vehicle or a street car within the meaning of this Act or a motorized snow vehicle within the meaning of the *Motorized Snow Vehicles Act*;

R.S.O. 1980,
c. 301

- (b) under section 233, 236, 237 or 239 of the *Criminal Code* (Canada) committed while driving or having the care, charge or control of a motor vehicle within the meaning of this Act or a motorized snow vehicle within the meaning of the *Motorized Snow Vehicles Act*;

- (c) under subsection 238 (5) of the *Criminal Code* (Canada) committed in relation to the driving or having the care, charge or control of a motor vehicle within the meaning of this Act or a motorized snow vehicle within the meaning of the *Motorized Snow Vehicles Act*; or

R.S.C. 1970,
c. C-34

R.S.O. 1980,
c. 301

- (d) referred to in a predecessor to this subsection,

is thereupon suspended for a period of,

- (e) upon the first conviction, one year;
- (f) upon the first subsequent conviction, two years; and
- (g) upon an additional subsequent conviction, three years.

(2) Subsection 26 (4) of the said Act is amended by striking out "234, 236 or" in the third line.

(3) The periods of suspension provided for in subsection 26 (1) of the said Act before its re-enactment by this Act continue to apply with respect to convictions for offences committed before section 3 of this Act comes into force.

(4) No person whose licence is or was suspended under subsection 26 (1) of the said Act or a predecessor thereof has a cause of action against the Registrar of Motor Vehicles or Her Majesty the Queen in right of Ontario for any misapplication of, or misadvice about, the suspension period under the said subsection 26 (1) or a predecessor thereof.

4. Subsection 27 (1) of the said Act is repealed and the following substituted therefor:

(1) The driver's licence of a person who is convicted of an offence under subsection 242 (4) of the *Criminal Code* (Canada) is thereupon suspended for a period of,

Suspension
for driving
while dis-
qualified
R.S.C. 1970,
c. C-34

- (a) upon the first conviction, one year; and
- (b) upon a subsequent conviction, two years,

in addition to any other period for which the licence is suspended and consecutively thereto.

(1a) In determining whether a conviction is a subsequent conviction for the purposes of subsection (1), the only question to be considered is the sequence of convictions and no

Determining
subsequent
conviction

consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

Five-year
limitation

(1b) Clause (1) (b) does not apply when the subsequent conviction is more than five years after the previous conviction.

5. The said Act is amended by adding thereto the following section:

Suspension
while pro-
hibited from
driving
R.S.C. 1970,
c. C-34
R.S.O. 1980,
c. 301

27a.—(1) Where the licence of a person who is subject to an order made under section 242 of the *Criminal Code* (Canada), if the order is the result of an offence committed while operating a motor vehicle within the meaning of this Act or a motorized snow vehicle within the meaning of the *Motorized Snow Vehicles Act*, is suspended under subsection 26 (1) or under subsection 27 (1), the licence shall remain suspended during the period of prohibition set out in the order notwithstanding the expiration of any other period of suspension.

Expanded
meaning
of order
R.S.C. 1970,
c. C-34

(2) For the purposes of subsection (1), “an order made under section 242 of the *Criminal Code* (Canada)” includes an order made under subsection 238 (1) of the *Criminal Code* (Canada) before the 26th day of April, 1976.

6. The said Act is further amended by adding thereto the following section:

Increased
suspension
time
R.S.C. 1970,
c. C-34

27b.—(1) Where an order is made under section 242 of the *Criminal Code* (Canada) or under subsection 26 (3) of this Act and the court or judge, when sentencing the offender or making the conviction, orders the imprisonment of the offender and that the period of prohibition or suspension, as the case may be, shall start to run on the termination of the imprisonment, the suspension imposed by subsection 26 (1) of this Act is thereupon increased by the period of imprisonment.

Modification
to increased
suspension

(2) Where the period of imprisonment referred to in subsection (1) is less than that ordered by the court or judge, the length of the increased suspension imposed by subsection (1) shall, upon the application of the offender, be reduced by a period equal to that by which the period of imprisonment was reduced.

7. Section 29 of the said Act is repealed and the following substituted therefor:

29.—(1) Where a person is in default of payment of a fine imposed upon conviction for an offence against this Act, the *Public Vehicles Act*, the *Public Commercial Vehicles Act* or the regulations made under any of them, an order may be made under subsection 70 (2) of the *Provincial Offences Act* directing that,

Suspension
for default
in payment
of fine
R.S.O. 1980,
cc. 425, 407,
400

- (a) the person's driver's licence be suspended; and
- (b) no driver's licence be issued to the person,

until the fine is paid.

(2) The Registrar shall,

Duty of
Registrar

- (a) on being informed of an outstanding order referred to in subsection (1), suspend the person's driver's licence, if it is not already suspended under another order referred to in subsection (1); and
- (b) on being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the licence are paid, reinstate the licence, unless the Registrar has been informed that,
 - (i) there is another outstanding order referred to in subsection (1) directing that the licence be suspended,
 - (ii) the licence is suspended under any other order or under another statute, or
 - (iii) an applicable prescribed administrative fee for handling a dishonoured cheque, or interest or a penalty charged to the person under subsection 5 (2), is outstanding.

(3) The Lieutenant Governor in Council may make regulations prescribing forms and procedures and respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this section.

Regulations

8.—(1) Subsection 30a (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 72, section 1, is amended by striking out "234.1" in the fourth line and inserting in lieu thereof "238".

(2) Subsection 30a (2) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 72, section 1, is amended by

striking out "234.1" in the second line and inserting in lieu thereof "238".

(3) Subsection 30a (3) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 72, section 1, is amended by striking out "subsection 235 (1)" in the first and second lines and inserting in lieu thereof "section 238" and by striking out "237" in the fourth line and inserting in lieu thereof "238".

(4) Subsection 30a (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 72, section 1, is amended by striking out "234.1 or 235" in the second line and inserting in lieu thereof "238".

9. Subsection 46 (6) of the said Act is repealed and the following substituted therefor:

Inspection

(6) Any police officer or any officer appointed for carrying out the provisions of this Act who has reason to believe that the brakes or braking systems on any vehicle on the highway do not conform to the regulations made under this section may at any time inspect or cause an inspection to be made of the brakes or braking systems of the vehicle and may, if the brakes or braking systems do not conform to the regulations, require the driver of the vehicle to take immediate steps to bring the brakes or braking systems into compliance with the regulations.

10. Section 48 of the said Act is amended by adding thereto the following subsection:

Exception

(1a) On and after the 1st day of January, 1986, clause (1) (b) applies to all motorcycles except those manufactured in or imported into Canada before the 1st day of January, 1971.

11. Subsection 94 (1) of the said Act is amended by striking out "after sunset to one-half hour before sunrise" in the fifth line and inserting in lieu thereof "before sunset to one-half hour after sunrise".

12. Subsection 109 (2) of the said Act is repealed and the following substituted therefor:

Rate of
speed by
by-law

(2) The council of a municipality and the trustees of a police village may, for motor vehicles driven on a highway or portion of a highway under its jurisdiction, by by-law prescribe a rate of speed different from the rate set out in subsection (1).

(2a) The rate of speed prescribed under subsection (2) shall be 40, 50, 60, 70, 80, 90 or 100 kilometres per hour. Idem

13. Subsection 147 (2) of the said Act is repealed and the following substituted therefor:

(2) Subsection (1) does not apply to that portion of a roadway within a city, town or village. Where
subs. (1)
does
not apply

(2a) Subsection (1) does not apply to that portion of a roadway within a township, county or police village in respect of which there is a by-law prohibiting or regulating parking, standing and stopping. Idem

14.—(1) Section 184 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 61, section 7, is further amended by adding thereto the following subsections:

(1a) A judge, provincial judge or justice of the peace who makes a conviction for a prescribed offence or an offence under a prescribed Act of the Legislature or the Parliament of Canada or a regulation or order made under such prescribed Act or the clerk of the court in which the conviction is made shall forthwith certify the conviction to the Registrar setting out the name and address of the person convicted, the date the offence was committed, the provision contravened and such other information as is prescribed. Idem

(1b) The Minister may make regulations prescribing offences and Acts and information to be certified for the purpose of subsection (1a). Regulations

(2) Subsection 184 (2) of the said Act is amended by striking out “234, 236 or” in the fourth line.

15. Subsection 191 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 63, section 47, is further amended by striking out “section 35” in the second line and inserting in lieu thereof “sections 27 and 35”.

16. Section 192 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 48, section 21, is repealed and the following substituted therefor:

192.—(1) In conjunction with a conviction under section 30, 33 or 35 of this Act or section 237, 238 or 239 of the *Criminal Code* (Canada) or with a second conviction under section 236 of the *Criminal Code* (Canada), an order may issue that the motor vehicle driven by or under the care, charge or control of the person convicted at the time of the commission of Impounding
motor
vehicles
R.S.C. 1970,
c. C-34

the offence or second offence, as the case may be, shall be seized, impounded and taken into custody of the law for three months, subject to such conditions and in such manner as set out in the order.

Interpretation
R.S.C. 1970,
c. C-34

(2) For the purpose of subsection (1), a conviction under section 236 of the *Criminal Code* (Canada) that occurs after a conviction under any section referred to in subsection (1) shall be considered as a second conviction under section 236 of the *Criminal Code* (Canada).

Notice to
be given

(3) Where a conviction referred to in subsection (1) results because the accused pleads guilty, the order referred to in subsection (1) shall not be issued unless the person has been given notice,

- (a) by a printed or written statement upon or accompanying the summons; or
- (b) orally by the court before the plea of guilty is accepted,

in the following form or to the like effect:

“The Highway Traffic Act provides that upon conviction of the offence with which you are charged, in the circumstances indicated therein, an order may be issued that the motor vehicle driven by you or under your care, charge or control at the time of the commission of the offence shall be seized, impounded and taken into the custody of the law”.

When
vehicle
not to be
impounded

(4) An order shall not be issued under subsection (1) in respect of a motor vehicle that is not owned or held under a lease that has less than three months to run by the person convicted unless the person convicted is the principal driver thereof and, if there is a lease of the vehicle, the lease has more than three months to run.

Opportunity
to be heard

(5) Before an order is issued under subsection (1), an opportunity shall be given to any person who has an interest in the motor vehicle or is a dependant of or a family member residing with the person convicted to state why the order should not issue.

Undue
hardship

(6) Where representation is made under subsection (5), the court shall not issue the order if the court is of the opinion that undue hardship will result thereby.

(7) Where an order has been issued under subsection (1), any person referred to in subsection (5) may apply to the court for an amendment to or revocation of the order. Change in order

(8) The court, pursuant to an application under subsection (7), may amend or revoke an order that is the subject-matter of the application where there is a relevant change in circumstances since the order was made or information is brought out that was not disclosed before the order was made. Basis for change

(9) All costs and charges for the care and storage of a motor vehicle impounded under subsection (1) are a lien upon the vehicle. Lien

(10) A motor vehicle that is subject to a lien under subsection (9) may be retained in the custody of the law so long as the lien remains unpaid or until the motor vehicle is sold by public auction. Effect of lien

(11) Before a motor vehicle is sold under subsection (10), a reasonable effort shall be made to give the owner two weeks notice of the sale if the owner can be ascertained. Notice of sale

(12) For the purposes of this section, "court" means a judge or provincial judge. Definition

17. The said Act is further amended by adding thereto the following section:

194a.—(1) In respect of an offence under this Act, the *Public Commercial Vehicles Act, Public Vehicles Act, Compulsory Automobile Insurance Act, Fuel Tax Act, 1981* or the *Dangerous Goods Transportation Act, 1981* that involves a commercial motor vehicle, delivery of the offence notice or summons to the driver of the vehicle shall be deemed to be service on the owner of the vehicle for the purpose of Part I of the *Provincial Offences Act* unless, at the time of the offence, the vehicle was in the possession of the driver without the owner's consent. Exemption from R.S.O. 1980, c. 400 R.S.O. 1980, cc. 407, 425, 83 1981, cc. 59, 69

(2) Section 91g of the *Provincial Offences Act* does not apply to a report or certificate made under section 28 or 184 of this Act. Idem

18.—(1) This Act, except sections 10 and 17, comes into force on the day it receives Royal Assent. Commencement

(2) Section 10 comes into force on the 2nd day of June, 1986. Idem

Idem

(3) Section 17 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

19. The short title of this Act is the *Highway Traffic Amendment Act, 1985*.