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4th SESSION, 62nd GENERAL ASSEMBLY  
Province of Prince Edward Island  
55 ELIZABETH II, 2006

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## **CHAPTER 8**

(Bill No. 27)

### **An Act to Amend the Highway Traffic Act**

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Honourable Gail A. Shea  
Minister of Transportation and Public Works

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GOVERNMENT BILL

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MICHAEL D. FAGAN  
Queen's Printer  
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## CHAPTER 8

### An Act to Amend the Highway Traffic Act

(Assented to December 15, 2006)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

**1. Section 69 of *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5 is amended**

**(a) by renumbering it as subsection 69(1);**

**(b) in clause (1)(d), by the deletion of the period and the substitution of a semicolon;**

**(c) by the addition of the following after clause (1)(d):**

(e) defining the terms “newly licensed driver” and “accompanying driver”;

(f) prescribing driver’s licenses of different classes and levels for newly licensed drivers;

(g) prescribing the stages of licensing for newly licensed drivers and the conditions that must be met for each stage of licensing in respect of the implementation of a Graduated Driver Licensing (GDL) System;

(h) prescribing the qualifications of applicants for, and holders of, any class or level of driver’s license for newly licensed drivers;

(i) prescribing the qualifications and requirements, including a maximum blood alcohol concentration level, for accompanying drivers;

(j) requiring newly licensed drivers with driver’s licenses of any class or level to be accompanied, while driving, by an accompanying driver;

(k) prescribing additional information that a peace officer or an inspector may request and that a passenger is required to give under subsection (5);

(l) respecting practical and written driving examinations and mental and physical examinations, including ophthalmic and auditory examinations, for applicants for driver’s licenses for newly licensed drivers of any class or level;

(m) prescribing the length of time or the method of determining the length of time during which a person shall be a newly licensed driver or shall be restricted to any level of driver’s license for a newly licensed driver;

- (n) prescribing the circumstances under which the driver's license of a newly licensed driver shall be cancelled or suspended and the length of the suspension or suspensions;
- (o) prescribing the circumstances under which a newly licensed driver may be required to attend before an official of the division
  - (i) for an interview,
  - (ii) to take an examination, or
  - (iii) both;
- (p) respecting the examination referred to in clause (o);
- (q) prescribing the circumstances under which a newly licensed driver may be required to produce evidence with regard to the successful completion of a Minister approved driver education or driver improvement course;
- (r) prescribing the modifications to the demerit point system prescribed under section 284 insofar as it applies to newly licensed drivers and exempting newly licensed drivers or any class or level of driver's license for newly licensed drivers from any of the provisions of the demerit point system;
- (s) prescribing the conditions and restrictions, including a maximum blood alcohol concentration level or a blood alcohol concentration level of zero, that shall apply to any class or level of driver's license for newly licensed drivers;
- (t) prescribing the markers or identifying devices to be displayed on or in motor vehicles driven by newly licensed drivers or newly licensed drivers with driver's licenses of any class or level and governing the conditions of their use and the manner of displaying them;
- (u) exempting newly licensed drivers or newly licensed drivers with a driver's license of any class or level from any requirement of this Act or any regulation made under this Act and prescribing conditions for the exemption;
- (v) prescribing provincially approved screening devices and their calibration for the purposes of section 277.9;
- (w) prescribing devices for the purposes of subsection 277.9(14).

**(d) by the addition of the following after subsection (1):**

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|-----------------------------|--|
| Classes                     | (2) A regulation made under subsection (1) may apply in respect of any class of driver's license for newly licensed drivers.   |
| Approved courses            | (3) The Minister may approve driver education and driver improvement courses for the purposes of clause (1)(q).  |
| Identification of passenger | (4) A peace officer or an inspector may request that a passenger in a motor vehicle driven by a newly licensed driver identify himself or herself if the peace officer or inspector suspects that the newly licensed driver is contravening a regulation made under subsection (1) and the |

passenger of whom the request is made shall give the peace officer or inspector his or her correct name and address.

(5) A peace officer or an inspector may also request additional prescribed information from a passenger of whom he or she requests identification under subsection (4) and the passenger of whom the request is made shall give the peace officer or inspector the requested information.

Additional  
information

(6) Every newly licensed driver who contravenes a condition or restriction prescribed by a regulation made under subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of not less than \$100 and not more than \$1,000.

Offence, newly  
licensed driver

## 2. Section 82 of the Act is amended

**(a) by the repeal of subsection (1) and the substitution of the following:**

**82.** (1) Any person who

(a) is 16 years of age or older may apply to the Registrar for an instruction permit to drive a motor vehicle; and

(b) is 14 years of age or older may apply to the Registrar for an instruction permit to drive a farm tractor,

and the Registrar may, in the Registrar's discretion, after the person has successfully passed all parts of any oral, written or other examination as the Registrar may authorize, other than the driving test, issue to the person an instruction permit that shall entitle the person, while having such permit in the person's immediate possession, to drive a motor vehicle on a highway when accompanied by a licensed operator who is occupying the seat beside the person, except when the person is operating a motor cycle or farm tractor.

Instruction permits

**(b) by the repeal of subsection (2);**

**(c) in subsection (3), by the deletion of the word "he" and the substitution of the words "the holder of an instruction permit" wherever they occur;**

**(d) in subsection (4),**

**(i) by the deletion of the words "one hundred and eighty days" and the substitution of the words "365 days", and**

**(ii) by the deletion of the words "that he has qualified for a driver's license; but before issuing the certificate, the examiner shall satisfy himself" and the substitution of the words "that the applicant has qualified for a driver's license, but before issuing the certificate, the examiner shall satisfy himself or herself";**

**(e) by the addition of the following after subsection (4):**

Driver education program

(4.1) Notwithstanding subsection (4), the holder of an instruction permit who has successfully completed a driver education program in the province, may, not sooner than 275 days after the issue of such instruction permit and thereafter at any time before the expiration of the permit, apply to an examiner for a certificate that the applicant has qualified for a driver’s license, but before issuing the certificate, the examiner shall satisfy himself or herself, by means of an actual driving test, that the applicant is proficient in the operation of a motor vehicle.

**(f) in subsection (5), by the deletion of the word “his” and the substitution of the words “the Registrar’s”.**

**3. Section 92.1 of the Act is repealed and the following substituted:**

Definition, “immediate family member”

**92.1** (1) In this section, “immediate family member” means, in respect of a newly licensed driver,

- (a) the spouse or common-law partner of the newly licensed driver;
- (b) the father and mother of the newly licensed driver and the spouse or common-law partner of the father or mother of the newly licensed driver;
- (c) the children of the newly licensed driver and the children of the newly licensed driver’s spouse or common-law partner;
- (d) the grandchildren of the newly licensed driver;
- (e) the brothers and sisters of the newly licensed driver;
- (f) the grandfather and grandmother of the newly licensed driver;
- (g) the father and mother of the spouse or common-law partner of the newly licensed driver and the spouse or common-law partner of the father or mother; and
- (h) any relative of the newly licensed driver who resides permanently with the newly licensed driver or with whom the newly licensed driver permanently resides.

Limitation on number of passengers not an immediate family member

(2) Where the driver of a motor vehicle is a newly licensed driver who has held a valid driver’s license for less than one year, the newly licensed driver shall not operate the motor vehicle on a highway while accompanied by more than one passenger who is not an immediate family member of the newly licensed driver.

Limitation on number of passengers, year two

(3) Where the driver of a motor vehicle is a newly licensed driver who has held a valid driver’s license for less than two years, the newly licensed driver shall not operate the motor vehicle on a highway while accompanied by more passengers than may be accommodated in a seating position that has an available seat belt.

(4) Where the driver of a motor vehicle is a newly licensed driver who has held a valid driver's license for less than two years, the newly licensed driver shall not operate the motor vehicle on a highway while accompanied by a passenger who is not wearing a seat belt but is seated in a seating position that has an available seat belt.

Offence, newly  
licensed driver

#### 4. Subsection 253(1) of the Act is amended

**(a) in clause (b), by the deletion of the word “and” after the semicolon;**

**(b) in clause (c), by the deletion of the period and the substitution of the words “; and”; and**

**(c) by the addition of the following after clause (c):**

(d) may require an accompanying driver in a motor vehicle driven by a newly licensed driver, on request, to identify himself or herself and produce for inspection his or her driver's license, and the accompanying driver of whom the request is made shall give the peace officer his or her correct name, address and driver's license for inspection.

#### 5. Section 277.1 of the Act is amended

**(a) in subsection (6.1), by the addition of the words “under subsection (6)” after the words “A 24 hour suspension”; and**

**(b) by the addition of the following after subsection (6.1):**

(6.2) Where a peace officer requests the surrender of a person's driver's license under subsection (1), (2) or (2.1) for the second time within a two year period, the driver's license of the person to whom the request was made is suspended and invalid for any purpose, regardless of whether the person surrenders the person's driver's license, and the person's driver's license and driving privileges are suspended for a period of 30 days from the time the request is made, where

Suspension of  
driver's license

(a) the screening device referred to in subsection (1) registers “WARN” or “FAIL”;

(b) the analysis referred to in subsection (2) indicates that

(i) the proportion of alcohol in the person's blood is 50 milligrams or more of alcohol in 100 millilitres of blood but is less than 100 milligrams of alcohol in 100 millilitres of blood, or

(ii) the proportion of alcohol in the person's blood is 100 milligrams or more of alcohol in 100 millilitres of blood; or

(c) the person fails or refuses to provide a sample of the person's breath.

Concurrent suspension (6.3) A 30 day suspension under subsection (6.2) shall be served concurrently with a prior unexpired suspension.

Suspension of driver's license (6.4) Where a peace officer requests the surrender of a person's driver's license under subsection (1), (2) or (2.1) for the third time within a two year period, the driver's license of the person to whom the request was made is suspended and invalid for any purpose, regardless of whether the person surrenders the person's driver's license, and the person's driver's license and driving privileges are suspended for a period of 90 days from the time the request is made, where

- (a) the screening device referred to in subsection (1) registers "WARN" or "FAIL";
- (b) the analysis referred to in subsection (2) indicates that
  - (i) the proportion of alcohol in the person's blood is 50 milligrams or more of alcohol in 100 millilitres of blood but is less than 100 milligrams of alcohol in 100 millilitres of blood, or
  - (ii) the proportion of alcohol in the person's blood is 100 milligrams or more of alcohol in 100 millilitres of blood; or
- (c) the person fails or refuses to provide a sample of the person's breath.

Concurrent suspension (6.5) A 90 day suspension under subsection (6.4) shall be served concurrently with a prior unexpired suspension.

**(c) in clause (13)(a), by the deletion of the words "shall be construed as references to 50 milligrams of alcohol" and the substitution of the words "shall be construed as references to zero milligrams of alcohol".**

**6. The Act is amended by the addition of the following after section 277.7:**

CONSUMPTION OF ALCOHOL BY CERTAIN DRIVERS

Consumption of alcohol by certain drivers **277.8** (1) Every person who

- (a) either
  - (i) is a newly licensed driver, or
  - (ii) holds a driver's license issued prior to the day this section comes into force and has held a driver's license for less than two years;
- (b) is operating or has care and control of a motor vehicle, whether it is in motion or not; and
- (c) has consumed alcohol in such a quantity that the concentration in the person's blood exceeds zero milligrams of alcohol in 100 millilitres of blood,

is guilty of an offence.

(2) Where a peace officer believes on reasonable and probable grounds that a person is committing, or at any time within the preceding two hours has committed, as a result of the consumption of alcohol, an offence under subsection (1), the peace officer may, by demand made to that person forthwith or as soon as practicable, require that person to provide then or as soon thereafter as is practicable,

Breath samples

(a) such samples of the person's breath, as in the opinion of the peace officer, are necessary to enable a proper analysis of the person's breath to be made by means of an approved screening device as defined in subsection 254(1) of the *Criminal Code*; or

(b) where the peace officer has reasonable and probable grounds to believe that, by reason of any physical condition of the person,

(i) the person may be incapable of providing a sample of his or her breath, or

(ii) it would be impracticable to obtain a sample of the person's breath,

such samples of the person's blood, under the conditions referred to in subsection (3), as in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable the proper analysis to be made in order to determine the concentration, if any, of alcohol in the person's blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

(3) Samples of blood may only be taken from a person pursuant to a demand made by a peace officer under subsection (2) if the samples are taken by or under the direction of a qualified medical practitioner and the qualified medical practitioner is satisfied that the taking of those samples would not endanger the life or health of the person.

Blood samples

(4) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made to that person by a peace officer under this section.

Offence

(5) Where, upon demand by a peace officer made under subsection 254(2) of the *Criminal Code*, a driver who is a newly licensed driver provides a sample of the person's breath that, on an analysis by an approved screening device as defined in subsection 254(1) of the *Criminal Code*, registers "Pass" but the peace officer reasonably suspects that the driver has alcohol in his or her body, the peace officer may, for the purpose of determining whether the person has committed, as a result of the consumption of alcohol, an offence under subsection (1), demand that the driver provide, within a reasonable time, such further sample of breath as, in the opinion of the peace officer or qualified technician, is necessary to enable the proper analysis of the breath to be made by means of an approved instrument as defined in subsection 254(1) of the

Further sample of  
breath

*Criminal Code* and, if necessary, to accompany the peace officer for the purpose of enabling such a sample of breath to be taken.

#### 24 HOUR REVOCATION AND SUSPENSION OF DRIVER'S LICENSE — NEWLY LICENSED DRIVER

Definitions	<b>277.9</b> (1) In this section
provincially approved screening device	(a) “provincially approved screening device” means a provincially approved screening device prescribed by regulation;
qualified technician	(b) “qualified technician” means a qualified technician as defined in subsection 254(1) of the <i>Criminal Code</i> .
Application	(2) Subsection (3) applies and subsection (4) does not apply if a peace officer making a demand of a newly licensed driver uses one screening device for the purposes of section 277.1 and another screening device for the purposes of this section, and subsection (4) applies and subsection (3) does not apply if the peace officer uses one screening device for the purposes of both section 277.1 and this section.
Surrender of license	(3) A peace officer may request a newly licensed driver to surrender the person's driver's license if, upon demand of the peace officer made under section 277.8, the newly licensed driver fails or refuses to provide a sample of breath or provides a sample of breath that, on analysis by a provincially approved screening device, produces a result indicating the presence of alcohol.
<i>Idem</i>	(4) A peace officer may request a newly licensed driver to surrender the person's driver's license if, upon demand made by the peace officer under subsection 254(2) of the <i>Criminal Code</i> , the newly licensed driver <ul style="list-style-type: none"> <li>(a) fails or refuses to provide a sample of breath; or</li> <li>(b) provides a sample of breath that, on analysis, produces a result indicating the presence of alcohol.</li> </ul>
24 hour suspension	(5) A newly licensed driver whose driver's license has been requested for surrender under subsection (3) or (4) shall surrender the license to the peace officer requesting it forthwith and, whether or not the newly licensed driver is unable or fails to surrender the driver's license to the peace officer, the newly licensed driver's driver's license and driving privileges are suspended for a period of 24 hours from the time the request for surrender is made.
Further analysis	(6) Where an analysis of the breath of a newly licensed driver is made under section 277.8 or subsection (4) and the analysis produces a result indicating the presence of alcohol, the newly licensed driver may require a further analysis to be made by means of a provincially approved screening device, in which case the result obtained on the second

analysis governs and any revocation of a newly licensed driver's driver's license and suspension of a driving privilege resulting from the analysis under section 277.8 or subsection (4) continues or terminates accordingly.

(7) Where an analysis of the breath of a newly licensed driver is made under section 277.8 or subsection (4) and the analysis produces a result indicating the presence of alcohol, the peace officer who made the demand for the sample of breath shall advise the newly licensed driver of the right under subsection (6) to a further analysis.

Right to further analysis

(8) The revocation of a driver's license and the suspension of a driving privilege pursuant to this section are in addition to and not in substitution for any other proceeding or penalty arising from the same circumstances.

Revocation and suspension separate from any other proceeding or penalty

(9) Every peace officer who requests the surrender of the driver's license from a newly licensed driver under section 277.1 or this section shall

Duties of peace officer

- (a) keep a written record of the suspension with the name, address and license number of the newly licensed driver and the date and time of the suspension;
- (b) provide the newly licensed driver with a written statement setting out the time at which the suspension takes effect, the length of the period during which the driver's license is suspended, the place where the driver's license may be recovered upon the termination of the suspension, and an acknowledgement of receipt of the driver's license that is surrendered; and
- (c) forward to the Registrar forthwith a written report setting out the name, address and license number of the newly licensed driver and such particulars respecting the taking of the sample of breath and the conduct and results of the analysis as the Registrar may require in relation to the matter.

(10) Where the motor vehicle driven by a newly licensed driver whose driver's license and driving privileges are suspended under this section is in a location from which, in the opinion of a peace officer, the motor vehicle should be removed and there is no person easily available who may lawfully remove the vehicle with the consent of the newly licensed driver, the peace officer may remove and store the vehicle or cause it to be removed and stored and shall notify the newly licensed driver of its location.

Removal and storage of vehicle

(11) The costs and charges incurred in moving and storing a motor vehicle pursuant to subsection (10) shall be paid, before the vehicle is released, by the person to whom the vehicle is released.

Costs and charges

Costs of moving and storage (12) Where a peace officer requests assistance to remove a motor vehicle under subsection (10), the costs and charges incurred in moving or storing the vehicle, or both, are a lien on the vehicle that may be enforced under the *Garage Keepers' Lien Act* by the person who moved or stored the vehicle at the request of the peace officer.

Offence (13) Every person who, without reasonable excuse, fails or refuses to comply with a demand made to the person by a peace officer under this section, is guilty of an offence.

Proof of breach of condition, offence (14) Where an analysis of the sample of breath of a newly licensed driver has been made for the purposes of section 277.1 or this section by means of any device prescribed by regulation for the purpose of this subsection and the analysis has produced a result indicating the presence of alcohol, that result shall be, in the absence of evidence to the contrary, proof that the newly licensed driver has breached a condition of his or her driver's license and has committed an offence under subsection 277.8(1).

Intent of suspension (15) The suspension of a newly licensed driver's driver's license and driving privileges resulting from a conviction of a breach of a condition of a license that has resulted in the commission of an offence under subsection 277.8(1) or by reason of the operation of this section is intended  
 (a) to ensure that the newly licensed driver acquires experience and develops or improves safe driving skills in controlled conditions; and  
 (b) to safeguard the holder of the driver's license and the public.

**7. Clause 312(z.1) of the Act is amended by the addition of the words “, headphones, mp3 player or any other electronic device” after the words “prohibiting or regulating the use of a cellular telephone”.**

**8. The Schedule to the Act is amended**

**(a) by the addition of the following after the entry relating to section 68:**

69(6)	Contravening a condition or restriction prescribed by a regulation made under subsection 69(1) in respect of a newly licensed driver	100	1,000
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**(b) by the deletion of the entry relating to subsection 92.1(1) and the substitution of the following:**

92.1(2)	Newly licensed driver holding a valid driver's license for less than one year operating a motor vehicle on a highway while accompanied by more than one passenger who is not an immediate family member of the newly licensed driver	100	200
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92.1(3)	Newly licensed driver holding a valid driver's license for less than two years operating a motor vehicle on a highway while accompanied by more passengers than may be accommodated in a seating position that has an available seat belt	100	200
92.1(4)	Newly licensed driver holding a valid driver's license for less than two years operating a motor vehicle on a highway while accompanied by a passenger who is not wearing a seat belt but is seated in a seating position that has an available seat belt	100	200

**9. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.**

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**CHAPTER 8**

**(Bill No. 27)**

**An Act to Amend the Highway Traffic Act**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	December 12, 2006
<i>2nd Reading:</i>	December 13, 2006
<i>To Committee:</i>	December 13, 2006
<i>Reported:</i>	December 13, 2006
<i>3rd Reading and Pass:</i>	December 15, 2006
<i>Assent:</i>	December 15, 2006

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Honourable Gail A. Shea  
Minister of Transportation and Public Works

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GOVERNMENT BILL