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Province of Prince Edward Island  
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**CHAPTER 74**

(Bill No. 81)

**An Act to Amend the Highway Traffic Act (No. 2)**

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Honourable Ron W. MacKinley  
Minister of Transportation and Public Works

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GOVERNMENT BILL

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## CHAPTER 74

### An Act to Amend the Highway Traffic Act (No. 2)

(Assented to May 15, 2009)

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

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

(a) by the repeal of clause (a) and the substitution of the following:

(a) “approved instrument” means an approved instrument as defined in section 254 of the *Criminal Code*; approved instrument

(a.01) “approved screening device” means an approved screening device as defined in section 254 of the *Criminal Code*; approved screening device

(a.02) “authorized insurer” or “insurer” means an insurance company lawfully authorized or permitted to carry on its business in Prince Edward Island; “authorized insurer” or “insurer”

(b) by the addition of the following after clause (g.3):

(g.4) “graduated driver” means a newly licensed driver or a Stage 1 driver; graduated driver

(c) by the addition of the following after clause (k.2):

(k.03) “newly licensed driver” means a newly licensed driver as defined in the *Highway Traffic Act* Graduated Driver Licensing Regulations; newly licensed driver

(d) by the addition of the following after clause (t):

(t.01) “Stage 1 driver” means a Stage 1 driver as defined in the *Highway Traffic Act* Graduated Driver Licensing Regulations; Stage 1 driver

#### 2. Subsection 69(1) of the Act is amended

(a) by the deletion of the semi-colon following clause (u) and the substitution of a period; and

(b) by the repeal of clauses (v) and (w).

**3. Clause 73(1)(n) of the Act is repealed and the following substituted:**

- (n) to a person if
  - (i) the person has been convicted of two or more offences against section 253 or subsection 254(5) of the *Criminal Code*,
  - (ii) the person's last driver's license was not cancelled under subsection 261(1) or 261(1.2), and
  - (iii) the driver's license would be the first driver's license issued to the person after his or her last such conviction,
 unless the Registrar is satisfied that the person has, after his or her last such conviction, successfully completed an alcohol addiction or consumption management program; and
- (o) to a person if the person's last driver's license was cancelled under subsection 261(1) or 261(1.2), unless the Registrar
  - (i) is satisfied the person has, after his or her last driver's license was so cancelled, successfully completed an alcohol addiction or consumption management program, and
  - (ii) specifies, as a condition of the driver's license issued to the person that the person is restricted, for the first 12 months of the driver's license, to driving a motor vehicle that is equipped with an alcohol ignition interlock device of a type specified in the driver's license.

**4. (1) Clause 90(b) of the Act is amended by the deletion of the words "sections 253(a), 253(b) or 254(5)" and the substitution of the words "section 253 or subsection 254(5)".**

**(2) The Act is amended in the following provisions by the deletion of the words "section 253(a), 253(b) or 254(5)" and the substitution of the words "section 253 or subsection 254(5)":**

- (a) subsection 255(1);
- (b) clause 261(1)(a);
- (c) subsection 262(2);
- (d) subclause 271(2)(a)(i) and clause 271(2)(b); and
- (e) clauses 312(y) and (y.1).

**(3) The Act is amended in the following provisions by the deletion of the words "section 253(a) or 253(b)" and the substitution of the words "section 253":**

- (a) clause 90(c); and
- (b) clause 261(1)(b).

**5. (1) Subsections 277.1(1) to (7) of the Act are repealed and the following substituted:**

**277.1** (1) Where, upon demand of a peace officer made under section 254 of the *Criminal Code*, a person provides a sample of the person's breath which, on an analysis by an approved screening device or an approved instrument, indicates that the proportion of alcohol in the person's blood is 50 milligrams or more of alcohol in 100 millilitres of blood, the peace officer shall request the person to surrender the person's driver's license.

Request for  
surrender of  
driver's license  
after breathalyzer  
test

(2) Where a peace officer requests the surrender of a person's driver's license under subsection (1), the person to whom the request is made shall immediately surrender the person's driver's license to the peace officer.

Surrender of  
driver's license

(3) Where

(a) a peace officer requests the surrender of a person's driver's license under subsection (1); and

(b) the analysis referred to in subsection (1) of a sample of the person's breath indicates that the proportion of alcohol in the person's blood is 100 milligrams or more of alcohol in 100 millilitres of blood,

the person's driver's license and driving privileges are suspended and invalid for any purpose for a period of 24 hours from the time the request is made, regardless of whether the person surrenders the person's driver's license.

24 hour suspension  
of driver's license

(3.1) A 24 hour suspension under subsection (3), or a 7 day suspension under subsection (3.2) shall be served concurrently with a prior unexpired suspension.

Concurrent  
suspension

(3.2) Where

(a) a peace officer requests the surrender of a person's driver's license under subsection (1); and

(b) the analysis referred to in subsection (1) of a sample of the person's breath indicates that 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,

the person's driver's license and driving privileges are suspended and invalid for any purpose for a period of 7 days from the time the request is made, regardless of whether the person surrenders the person's driver's license.

7 day suspension of  
driver's license

(3.3) Where

30 day suspension  
of driver's license

- (a) a peace officer requests the surrender of a person's driver's license under subsection (1) for the second time within a two year period; and
- (b) the analysis referred to in subsection (1) of a sample of the person's breath indicates that 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,

the person's driver's license and driving privileges are suspended and invalid for any purpose for a period of 30 days from the time the request is made, regardless of whether the person surrenders the person's driver's license.

Concurrent suspension

(3.4) A 30 day suspension under subsection (3.3) shall be served concurrently with a prior unexpired suspension imposed under this section.

90 day suspension of driver's license

(3.5) Where

- (a) a peace officer requests the surrender of a person's driver's license under subsection (1) for the third time within a two year period; and
- (b) the analysis referred to in subsection (1) of a sample of the person's breath indicates that 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,

the person's driver's license and driving privileges are suspended and invalid for any purpose for a period of 90 days from the time the request is made, regardless of whether the person surrenders the person's driver's license.

Concurrent suspension

(3.6) A 90 day suspension under subsection (3.5) shall be served concurrently with a prior unexpired suspension imposed under this section.

Duties of peace officer

(4) Where, under this section, the driver's license of a person is suspended, the peace officer who requested the surrender of the person's driver's license under subsection (1) shall

- (a) keep a written record of the license suspended with the name and address of the person and the date and time of the suspension;
- (b) serve on the person a notice of driving suspension in the prescribed form which indicates the duration of the suspension, the date and time from which the suspension takes effect and the reason for the suspension;
- (c) where the person surrenders his or her driver's license, give the person a receipt therefor; and

(d) notify the Registrar in writing of the suspension of the driver's license giving the name and address shown on the license and the number of the license.

**(2) Subsection 277.1(8) of the Act is amended**

**(a) by the deletion of the words “Where a person whose license is suspended under this section” and the substitution of the words “Where a person's driver's license is suspended under this section and the person forthwith after the suspension”;**

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

**(c) by renumbering it as subsection 277.1(5).**

**(3) Subsections 277.1(9) and (10) of the Act are amended by renumbering them as subsections 277.1(6) and (7), respectively.**

**(4) Subsection 277.1(11) of the Act is amended**

**(a) by the deletion of the words “subsection (10)” and the substitution of the words “subsection (7)”; and**

**(b) by renumbering it as subsection 277.1(8).**

**(5) Subsection 277.1(12) of the Act is amended**

**(a) by the deletion of the words “clause (7)” wherever they occur and the substitution of the words “clause (4)”; and**

**(b) by renumbering it as subsection 277.1(9).**

**(6) Subsection 277.1(13) of the Act is repealed and the following substituted:**

(10) This section does not apply to a person who

(a) is a graduated driver; or

(b) is under the age of 19 years.

Application of  
section

**6. The Act is amended by the addition of the following immediately before section 277.8:**

**277.71** For the purposes of section 277.8, “qualified technician” means a qualified technician as defined in subsection 254(1) of the *Criminal Code*.

qualified  
technician, defined

**7. (1) Clause 277.8(1)(a) of the Act is repealed and the following substituted:**

(a) is a graduated driver or under the age of 19 years;

**(2) Clause 277.8(2)(a) of the Act is amended by the deletion of the words “as defined in subsection 254(1) of the *Criminal Code*”.**

**(3) Subsection 277.8(5) of the Act is repealed.**

**8. The heading immediately before section 277.9 of the Act is repealed.**

**9. (1) Subsection 277.9(1) of the Act is repealed.**

**(2) Subsection 277.9(2) of the Act is repealed and the following substituted:**

Application

**277.9 (1)** Subsection (2) applies and subsection (3) does not apply if a peace officer making a demand of a person who is a graduated driver or under the age of 19 years uses one approved screening device or approved instrument for the purposes of section 277.1 and another approved screening device or approved instrument for the purposes of this section, and subsection (3) applies and subsection (2) does not apply if the peace officer uses one approved screening device or approved instrument for the purposes of both section 277.1 and this section.

**(3) Subsection 277.9(3) of the Act is amended**

**(a) by the deletion of the words “a newly licensed driver” and the substitution of the words “a person who is a graduated driver or under the age of 19 years”;**

**(b) by the deletion of the words “the newly licensed driver” and the substitution of the words “the person”;**

**(c) by the deletion of the words “sample of breath or provides a sample of breath that, on analysis by a provincially approved screening device,” and the substitution of the words “sample of breath or blood or provides a sample of breath or blood that, on an analysis by an approved screening device, or by an approved instrument.”; and**

**(d) by renumbering it as subsection (2).**

**(4) Subsection 277.9(4) of the Act is amended**

**(a) by the deletion of the words “a newly licensed driver” and the substitution of the words “a person who is a graduated driver or under the age of 19 years”;**

**(b) by the deletion of the words “the newly licensed driver” and the substitution of the words “the person”; and**

**(c) by renumbering it as subsection (3).**

**(5) Subsection 277.9(5) of the Act is amended**

**(a) by the deletion of the words “A newly licensed driver whose driver’s license has been requested for surrender under subsection (3) or (4)” and the substitution of the words “Where the driver’s license of a person who is a graduated driver or under the age of 19 years has been requested for surrender under subsection (2) or (3), the person”;**

**(b) by the deletion of the words “the newly licensed driver” and the substitution of the words “the person”;**

**(c) by the deletion of the words “the newly licensed driver’s” and the substitution of the words “the person’s”;** and

**(d) by renumbering it as subsection (4).**

**(6) Subsections 277.9(6) to (8) of the Act are repealed and the following substituted:**

**(5) Where**

Further analysis

**(a) an analysis**

- (i) of the breath or blood of a person who is a graduated driver or under the age of 19 years is made under section 277.8, or
- (ii) of the breath of a person who is a graduated driver or under the age of 19 years is made in the circumstances referred to in subsection (3); and

**(b) the analysis produces a result indicating the presence of alcohol, the person may require a further analysis to be made by means of another approved screening device or approved instrument, in which case the result obtained on the second analysis governs and any suspension of the person’s driver’s license and driving privileges under subsection (4) continues or terminates accordingly.**

**(6) Where**

Peace officer to advise of right to further analysis

**(a) an analysis**

- (i) of the breath or blood of a person who is a graduated driver or under the age of 19 years is made under section 277.8, or
- (ii) of the breath of a person who is a graduated driver or under the age of 19 years is made in the circumstances referred to in subsection (3); and

**(b) the analysis produces a result indicating the presence of alcohol, the peace officer who made the demand for the sample of breath or blood, as the case may be, shall advise the person of the right under subsection (5) to a further analysis.**

Suspension separate from any other proceeding or penalty

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

**(7) Subsection 277.9(9) of the Act is repealed and the following substituted:**

Duties of peace officer

(8) Where, under this section a peace officer requests the surrender of a person’s driver’s license, the peace officer shall

- (a) keep a written record of the license suspended with the name and address of the person and the date and time of the suspension;
- (b) serve on the person a notice of driving suspension in the prescribed form which indicates the duration of the suspension, the date and time from which the suspension takes effect and the reason for the suspension;
- (c) where the person surrenders his or her driver’s license, give the person a receipt therefor which indicates the place where the driver’s license may be recovered upon the termination of the suspension;
- (d) notify the Registrar in writing of the suspension of the driver’s license giving the name and address shown on the driver’s license and the number of the driver’s license; and
- (e) provide 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.

**(8) Subsection 277.9(10) of the Act is amended**

**(a) by the deletion of the words “a newly licensed driver” and the substitution of the words “a person who is a graduated driver or under the age of 19 years”;**

**(b) by the deletion of the words “the newly licensed driver” wherever they occur and the substitution of the words “the person”; and**

**(c) by renumbering it as subsection (9).**

**(9) Subsection 277.9(11) of the Act is amended**

**(a) by the deletion of the words “subsection (10)” and the substitution of the words “subsection (9)”; and**

**(b) by renumbering it as subsection (10).**

**(10) Subsection 277.9(12) of the Act is amended**

**(a) by the deletion of the words “subsection (10)” and the substitution of the words “subsection (9)”; and**

**(b) by renumbering it as subsection (11).**

**(11) Subsection 277.9(13) of the Act is amended by renumbering it as subsection (12).**

**(12) Subsection 277.9(14) of the Act is amended**

**(a) by the deletion of the words “a newly licensed driver” and the substitution of the words “a person who is a graduated driver or under the age of 19 years”;**

**(b) by the deletion of the words “any device prescribed by regulation for the purpose of this subsection” and by the substitution of the words “any approved screening device or approved instrument”;**

**(c) by the deletion of the words “the newly licensed driver” and the substitution of the words “the person”; and**

**(d) by renumbering it as subsection (13).**

**(13) Subsection 277.9(15) of the Act is amended**

**(a) by the deletion of the words “a newly licensed driver’s” and the substitution of the words “a graduated driver’s or a person who is under the age of 19 years”;**

**(b) in clause (a), by the deletion of the words “the newly licensed driver” and the substitution of the words “the person”; and**

**(c) by renumbering it as subsection (14).**

**(14) Section 277.9 is amended by the addition of the following after subsection (14):**

(15) Where, under this section, the driver’s license of a person is suspended, then, in addition to the suspension under this section, the peace officer who requested the surrender of the driver’s license of the person shall impose an administrative driving prohibition pursuant to sections 277.2 to 277.7 and those sections shall apply with the necessary changes and, in particular, references in those sections

(a) to 80 milligrams of alcohol in 100 millilitres of blood shall be construed as references to zero milligrams of alcohol in 100 millilitres of blood; and

Young drivers,  
administrative  
driving prohibition

(b) to a certificate of analysis shall be construed as including a reference to a statement of the result of the test of the sample of breath shown by the approved screening device or approved instrument.

**10. Subsection 282(1) of the Act is amended by the deletion of the words “254(5), or 259(4)” and the substitution of the words “subsection 254(5) or 259(4)”.**

**11. Section 297 of the Act is repealed.**

**12. Section 312 of the Act is amended**

**(a) in clause (f.1),**

**(i) by the addition of the words “requiring and” before the words “providing for”,**

**(ii) by the deletion of the words “, at least once each year,” and the substitution of the words “, on an annual or other basis as specified in the regulations,”, and**

**(iii) by the deletion of the words “registered hereunder” and the substitution of the words “registered under this Act”; and**

**(b) by the addition of the following after clause (aa):**

(aa.1) prescribing the form and content of notices of driving suspension for the purposes of sections 277.1 and 277.9;

(aa.2) prescribing the form and content of combined notices of driving suspension and prohibition for the purposes of

(i) subsections 277.1(3) and (4) and section 277.2, or

(ii) subsections 277.9(4) and (8) and section 277.2;

**13. Clause 316(1)(c) of the Act is amended by the deletion of the words “and 254(5)” and the substitution of the words “and subsection 254(5)”.**

**14. The *Highway Traffic (Roadside Suspensions) Amendment Act S.P.E.I. 2008, Cap. 45* is repealed.**

**15. 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 74**

(Bill No. 81)

**An Act to Amend the Highway Traffic Act (No. 2)**

<i>STAGE:</i>	<i>DATE:</i>
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<i>Assent:</i>	May 15, 2009

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Honourable Ron W. MacKinley  
Minister of Transportation and Public Works

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GOVERNMENT BILL