

**MOTOR VEHICLE AND ROAD TRAFFIC (AMENDMENT) (NO. 2)
ACT, 1971**

No. 45



of 1971.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 29 of Cap. 168
3. Repeal and replacement of s. 35 of the principal Proclamation.

AN ACT TO FURTHER AMEND THE MOTOR VEHICLE AND ROAD TRAFFIC PROCLAMATION BY ABOLISHING THE OFFENCE OF RECKLESS DRIVING AND CREATING IN ITS PLACE THE OFFENCES OF CAUSING DEATH BY RECKLESS OR DANGEROUS DRIVING, RECKLESS AND DANGEROUS DRIVING GENERALLY, CARELESS AND INCONSIDERATE DRIVING AND DRIVING OR BEING IN CHARGE, WHEN UNDER THE INFLUENCE OF DRINK OR DRUGS.

Date of Assent: 22.12.1971

Date of Commencement: 23.12.1971

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Motor Vehicle and Road Traffic (Amendment) (No. 2) Act, 1971. Short title

2. Section 29 of the Motor Vehicle and Road Traffic Proclamation (hereinafter called the principal Proclamation) is amended in subsection (1) by the deletion of the words "Any Court" and the substitution therefor of the words "Subject to the provisions of sections 35 and 35C, any Court". Amendment of s. 29 of Cap. 168

Repeal and replacement of s. 35 of the principal Proclamation

3. Section 35 of the principal Proclamation is repealed and replaced by the following new sections —

“Causing death by reckless or dangerous driving

35. (1) A person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic and animals which are actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of an offence and liable to a fine of R1000 and to imprisonment for five years.

(2) The Court before which a person is convicted of an offence under subsection (1) shall —

- (a) if the person convicted holds a licence under this Proclamation entitling him to drive a motor vehicle, suspend that licence for a period of not less than two years; and
- (b) if the person convicted does not hold a licence under this Proclamation entitling him to drive a motor vehicle, declare him to be disqualified from obtaining such a licence and from driving in Botswana for a period of not less than two years.

Reckless and dangerous driving generally

35A. (1) If a person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic and animals which are actually at the time, or which might reasonably be expected to be, on the road, he shall be guilty of an offence and liable to a fine of R400 and to imprisonment for two years.

(2) If upon the trial of a person for an offence against section 35, the Court is not satisfied that his driving was the cause of the death but is satisfied that he is guilty of an offence under subsection (1) it shall be lawful for it to convict him of an offence under this section.

(3) Upon the trial of a person for manslaughter contrary to section 200 of the Penal Code in con-

nection with the driving of a motor vehicle by him the Court may, if it is satisfied that he is guilty of an offence under this section, find him guilty of that offence.

Careless and
inconsiderate
driving

35B. (1) If a person drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road, he shall be guilty of an offence and liable to a fine of R100, or in the case of a second or subsequent conviction within a period of three years to a fine of R200 and to imprisonment for three months.

(2) Where a person is convicted of an offence under subsection (1) and he has been previously convicted of an offence under section 35 or section 35A he shall be treated for the purposes of subsection (1) as having been previously convicted under that subsection.

(3) If upon the trial of a person for an offence against section 35 or 35A the Court is of the opinion that the offence is not proved but is satisfied that he is guilty of driving as mentioned in subsection (1) it shall be lawful for it to convict him for an offence under this section.

Driving, or
being in
charge, when
under influ-
ence of drink
or drugs

35C. (1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs, shall be guilty of an offence and liable to a fine of R400 and to imprisonment for two years.

(2) Without prejudice to subsection (1), a person who, when in charge of a motor vehicle which is on a road or other public place, is unfit to drive through drink or drugs shall be guilty of an offence and liable to a fine of R100 and to imprisonment for six months, or in the case of a second or subsequent conviction to a fine of R200 and to imprisonment for twelve months:

Provided that a person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drugs.

(3) Where a person is convicted of an offence under subsection (2) and has been previously convicted of an offence under subsection (1), he shall be treated for the purposes of subsection (2) as having been previously convicted under that subsection.

(4) For the purposes of this section a person shall be deemed to be unfit to drive if his ability to drive properly is for the time being impaired.

(5) The Court before which a person is convicted of an offence under subsection (1) shall —

- (a) if the person convicted holds a licence under this Proclamation entitling him to drive a motor vehicle, suspend that licence for a period of not less than twelve months; and
- (b) if the person convicted does not hold a licence under this Proclamation entitling him to drive a motor vehicle, declare him to be disqualified from obtaining such a licence and from driving in Botswana for a period of not less than twelve months.

Power of
arrest

35D. Without prejudice to the powers of arrest conferred on a police officer under any other written law, a police officer may arrest without warrant the driver of any motor vehicle whom he suspects of having committed an offence under section 35, 35A or 35B if such driver fails on demand to give his name and address, and any such driver who fails on demand to give his name and address when it is so demanded from him, or who gives a false name or false address shall be guilty of an offence and liable to a fine of R25.

Right to
demand
name and
address

35E. If any person has reasonable grounds for believing that the driver or person in charge of any motor vehicle has committed an offence under section 35, 35A, 35B or 35C, he may, within a reasonable time after the occurrence of the event which gave rise to such belief and in the absence of a police officer, require any person who is or was in any way connected with such motor vehicle at the time of such occurrence, to furnish him with his name and address, and if such last-mentioned person fails to

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comply with such requirement or furnishes a false name or false address he shall be guilty of an offence and liable to a fine of R25.

Driving while disqualified under s. 35 or s. 35C (1)

35F. Notwithstanding any other provisions of this Proclamation, if a person drives or attempts to drive any motor vehicle while his licence is suspended or he is disqualified from holding or obtaining a licence, or from driving, as the case may be, after a conviction under section 35 or 35C (1), he shall be guilty of an offence and shall on conviction be sentenced to imprisonment for a period of not less than one and not more than six calendar months.”

Passed by the National Assembly this day, the 16th December, 1971.

G.T. MATENGE,
Clerk of the National Assembly.