

**SECTION 113-----LAND TRANSPORT (BREATH TESTS AND  
ANALYSES) REGULATIONS 2000**

*Legal Notice No. 63 of 2000 merged with Legal Notice No. 3 of 1999  
Amended by Legal Notice No. 148 of 2000*

TABLE OF PROVISIONS

REGULATION

1. Citation and commencement
2. Interpretation
3. Prescribed concentration of alcohol
4. Approved device and instrument
5. Procedure for breath test and breath analyses
6. Zero alcohol limit
7. Alteration of concentration
8. Defences available
9. Evidence from breath analysis
10. Evidence from blood sample
11. Miscellaneous

*Citation and commencement*

1. These Regulations may be cited as the Land Transport (Breath Tests and Analyses) Regulations 2000 and come into force on 10th July, 2000.

*Interpretation*

2.—(1) In these Regulations, unless the context otherwise requires—

“breathe testing device” means a device of a type specified in regulation 4 (1);

breath analysing instrument' means an instrument of a type specified in regulation 4(2);

“breath test” means a test carried out by a breath testing device for the purpose of indicating the concentration of alcohol present in a person's breath;

“breath analysis” means a test carried out by a breath analysing instrument for the purpose of ascertaining by analysis of a person's breath the concentration of alcohol present in that person's blood;

“Chief Inspector” means the person appointed as such under the provisions of the National and Trade Measurement Decree 1989.

“Commissioner of Police” means the commissioner of Police for the Republic of Fiji. **(LN 3/91)**

“Drager Alcotest 7110' means Drager Alcotest 7110 with 3 automatic print outs, used for breathe analysis. **(LN 3/91)**

(2) In these Regulations, references to sections are references to sections of the Land Transport Act 1998.

*Prescribed concentration of alcohol*

3.—(1) For the purpose of section 103(1) (a), the prescribed concentration of alcohol is 80 milligrams of alcohol in 100 millilitres of blood.

(2) Evidence that there is alcohol in the blood in excess of the prescribed concentration at a relevant time may be given by reference to a sample of the person's blood taken with his or her consent, or by reference to the reading on a breath analysing instrument in accordance with sub regulation (3).

(3) A reading on a breath analysing instrument in microgrammes of alcohol per 100 millilitres of blood is to be multiplied by 2.2 in order to arrive at the number of milligrams of alcohol in 100 millilitres of breath. **(LN 148/2000)**

*Approved device and instrument*

4.—(1) The Alcotest 7410 with dual screen and memory for 500 tests is approved as a breath testing device for the purpose of a breath test. **(LN148/2000)**

(2) The Drager Alcotest 7110 with 3 automatic printouts is approved as a kind of breath analysing instrument for the purpose of breath analysis.

(3) Every device and instrument used for breath tests and analyses must be tested, calibrated and certified by the Chief Inspector in accordance with the requirements of the National and Trade Measurement Decree 1989 before being used for the first time.

*Procedures for breath tests and breath analyses*

*Certificate under section 48 (13) (a)—(LN 3/91)*

5.—(1) A police officer may enter any premises without a warrant for the purpose of administering a breath test or breath analysis required by section 104(1).

(2) If —

(a) it appears to a police officer in consequence of a breath test carried out by the officer on a person under section 104(1) that there is present in that person's breath a concentration of alcohol of more than 35 microgrammes per 100 millilitres of blood;

(b) a person required by a police officer under section 104 ( 1) to undergo a breath test refuses to undergo the test in accordance with the directions of that officer; or

(c) a breath testing device is not immediately available and the police officer has reasonable cause to believe the person may have a concentration of alcohol of more than the prescribed limit,

the officer may arrest the person without warrant and take the person or cause the person to be taken, with reasonable force as may be necessary, to a police station or any other place as the officer considers desirable and there detain the person or cause the person to be detained for the purposes of breath analysis.

(3) A police officer may require a person who has been arrested under sub-regulation (2) to submit, in accordance with the directions of the officer, to a breath analysis.

(4) A police officer must not require a person to undergo a breath test or to submit to a breath analysis if—

(a) the person has been admitted to hospital for medical treatment, unless the medical practitioner in charge of the person's treatment consents in writing to the request and the medical practitioner is of the opinion the request would not be prejudicial to the proper care or treatment of the person; or

(b) it appears to the police officer that it would, by reason of injuries sustained by the person, be dangerous to the person's medical condition to undergo a breath test or submit to a breath analysis.

(5) As soon as practicable after a person has undergone a breath analysis the operator of the breath analysing instrument must deliver to the person—

(a) a statement automatically produced by the breath analysing instrument, specifying—

- (i) The concentration of alcohol determined by the analysis to be present in the person's breath and expressed in microgrammes of alcohol in 100 millilitres of breath; and
  - (ii) the day and time of the day at which the breath analysis was completed
- (b) statement in writing signed by the operator stating the concentration of alcohol in the person's blood as indicated by the analysis after applying the multiplier specified in regulation 3(3).
- (6) For the purpose of subsection (13) (a) of section 48 of the act, a certificate of prescribed by the commissioner of police and containing the informations specified in the subsection, shall be the prescribed certificate. **(LN 3/91)**

*Zero alcohol limit*

6. These regulations apply for the purpose of an offence under section 105(1) as duly apply in relation to an offence under section 103, except that in regulation 5(2) the figure of 35 microgrammes is replaced by 0 microgrammes

*Zero alcohol Limit and defences*

7. A person who between the time of the event referred to in section 103(1)(a) or 105(1) in respect of which the person has been required by the police officer to undergo a breath test and the time when the person undergoes the test or, if the person is required by the police officer to submit to a breath analysis, the time when the person submits the breath analysis, wilfully does anything to alter the concentration of alcohol in his or breath commits an offence and is liable on conviction to a fine of \$200 and to imprisonment for 1 year and to disqualification for 6 months.

*Defences available*

8. - (1) subject to sub-regulations (2), it is a defence for a person charged with an offence under section 103(1)(b) or 105(2) to prove that at the time the person is alleged to have committed the offence the person was unable, on medical grounds, to undergo a breath test or to submit to a breath analysis.

(2) The defence referred to in sub-regulation (1) is not available to a person unless

(a) upon refusing or being unable to undergo a breath test or breath analysis in accordance with the directions of a police officer the person consented to a sample of his or her blood being taken for analysis in accordance with regulation 6(1) and co-operated in allowing the blood sample to be taken without any delay on his or her part;

(b) if the medical grounds relied on in a defence under sub-regulation (6) are that the person was not then capable of supplying sufficient breath for test or for analysis - the person made a genuine attempt to supply a specimen of breath for test or analysis by complying to the best of his or her ability with the directions of the police officer.

*Evidence from breath analysis*

9 - (1) In proceedings for an offence under section 103(1)(a) or 105(1) evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analyzing instrument operated by a officer authorized in that behalf by the Commissioner of Police, and the concentration of alcohol determined as aforesaid is deemed to be the concentration of alcohol in the blood of that person at the time of the occurrence of the event referred to in section 103(1) (a) or 105(1) where the breath analysis was done within 2 hours after the event, unless the defendant proves that the concentration of alcohol in his blood at the time of that event was less than the prescribed limit.

(2) The fact that a person has undergone a breath test or submitted to a breath analysis and the result of a breath test or breath analysis are not, for the purposes of any contract of insurance, admissible as evidence of the fact that the person was at any time under the influence of or affected by alcohol or incapable of driving or of exercising effective control over a motor vehicle, but nothing in this regulation precludes the admission of any other evidence, including evidence of a conviction under section 102(1), 103(1) or 105(1) of the Act to show any such fact.

*Evidence from blood sample*

10.—(1) If a sample of blood is taken for analysis pursuant to regulation 5(4) (a) it must be taken by a medical practitioner nominated by a police officer and in the presence of that police officer at a hospital or other place nominated by the officer.

(2) A medical practitioner who takes a sample of a person's blood pursuant to regulation 5(4) (a) must hand the sample of blood, enclosed in a suitable sealed container, to the police officer present at the time the sample was taken.

(3) In proceedings for an offence under section 103(1)(a) or 105(1) evidence may be given of the concentration of alcohol present in the blood of the person charged, determined by an analysis made of the blood taken pursuant to regulation 5(4)(a), and the concentration of alcohol so determined is presumed to be the concentration of alcohol in the blood of that person at the time of the occurrence of the event referred to in section 103(1)(a) or 105(1) if the blood sample was taken within 2 hours after the relevant event, unless the defendant proves that the concentration of alcohol in his or her blood at the time of the relevant event was less than the prescribed limit.

*Miscellaneous*

11.—(1) It is a defence for a person charged with an offence under section 103(1)(a) or 105(1) to prove that at the time the person is alleged to have committed the offence there was no likelihood of his or her driving the vehicle whilst the proportion of alcohol in his or her breath or blood remained likely to exceed the prescribed limit.

(2) In proceedings for an offence under section 103(1) (a) or 105(1) a certificate purporting to be signed by a police officer stating any of the following facts—

- (a) the officer is authorised by the Commissioner of Police to operate breath analysing instruments;
- (b) the person named in the certificate submitted to a breath analysis;
- (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of these regulations;
- (d) the apparatus was in proper working order and adjusted correctly;
- (e) the apparatus was properly operated;
- (f) the analysis was made on the day and completed at the time stated in the certificate;
- (g) the breath analysing instrument should a concentration of alcohol in the breath expressed in microgrammes of alcohol in 100 millilitres of breath on the day and at the time stated in the certificate; and
- (h) a statement required by regulation 5(5) was delivered in accordance with that sub-regulation, is *prima facie* evidence of the matters stated in the certificate.

(3) In proceedings for an offence under this regulation, the prosecution may re-open its case at any time before judgment is given, and may adduce further evidence in rebuttal of any evidence raised by the defendant.

(4) These Regulations have effect notwithstanding anything contained in any contract of insurance and the contract is void to the extent that it excludes limits, modifies or restricts the operation of these Regulations.