

HONOURABLE MICHAEL DE JONG  
MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL

**BILL 14 — 2010**  
**MOTOR VEHICLE AMENDMENT ACT, 2010**

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

**Explanatory Note**

***1 Section 25 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, is amended by adding the following subsection:***

(10.3) For the purposes of a regulation under subsection (10) (c) that restricts the motorcycles or classes of motorcycles that a class of persons may drive,

(a) the minister may make regulations specifying the motorcycles or classes of motorcycles to which a member of the class of persons is restricted, by way of one or more of the following:

- (i) model;
- (ii) make;
- (iii) year, and

(b) subsection (11) does not apply to the restriction.

**Explanatory Note**

***2 Section 26 is amended***

***(a) in subsection (1) by striking out "or" at the end of paragraph (f) and by adding the following paragraphs:***

(h) is indebted to the government because of his or her failure to pay a monetary penalty imposed on the person under section 215.44 of this Act, or

(i) was the owner of a motor vehicle at the time it was impounded under section 215.46 or 251 (1) of this Act, if the superintendent, under section 255 (11) of this Act, directs the Insurance Corporation of British Columbia to refuse the issuance. ,

**(b) in subsection (2) by striking out "or" at the end of paragraph (c), by adding ", or" at the end of paragraph (d) and by adding the following paragraph:**

(e) was the owner of a motor vehicle at the time it was impounded under section 215.46 or 251 (1) of this Act, if the superintendent, under section 255 (11) (b), directs the Insurance Corporation of British Columbia to refuse the issuance. , **and**

**(c) in subsection (3) by striking out everything after paragraph (b) and substituting the following:**

who is indebted to the government because of his or her failure to pay

(c) a monetary penalty imposed under section 215.44 of this Act, or

(d) a fine, or a victim's surcharge levy within the meaning of the *Victims of Crime Act*, imposed as a result of a conviction under

(i) a motor vehicle related *Criminal Code* offence, or

(ii) an enactment referred to in subsection (1) (c) (ii) to (vii) of this section.

**Explanatory Note**

**3 Section 26.1 (1) (a) is amended by adding "or a monetary penalty under section 215.44" after "fine indebtedness".**

**Explanatory Note**

**4 Section 34 is amended**

**(a) in subsection (1) by adding the following paragraph:**

- (g) a motor vehicle operated under a permit granted under a regulation under section 210 (2)
- (j). , **and**

**(b) in subsection (1.1) by adding the following paragraph:**

- (d) a person who
  - (i) has a validly issued and subsisting driver's or operator's licence or permit issued according to the laws where he or she is ordinarily resident,
  - (ii) has entered into an agreement under which the person will work in British Columbia, as part of a program or in the circumstances specified by regulation, for a period longer than 6 months but shorter than one year, and
  - (iii) is in a prescribed class of persons,for the period during which the person works in British Columbia under the agreement.

**Explanatory Note**

**5 Sections 53 to 55, 194 and 221 are repealed and the following substituted:**

**Motorcycles**

- 194** (1) A person must not operate a motorcycle on a highway unless seated astride the driver's seat of the motorcycle.
- (2) A person, other than the operator, must not ride on a motorcycle on a highway unless
- (a) the motorcycle is designed and equipped to carry more than one person,
  - (b) the other person rides

- (i) astride the permanent and regular seat if designed for 2 persons, behind the operator,
- (ii) astride another seat firmly attached to the motorcycle behind the seat occupied by the operator, or
- (iii) on or in another seat firmly attached to one side of the motorcycle, and

(c) in the case of paragraph (b) (i) or (ii), the other person has both of his or her feet positioned on the foot pegs or floorboards of the motorcycle.

(3) A person must not operate or ride as a passenger on a motorcycle on a highway if the person is not wearing a motorcycle safety helmet that

- (a) is designated in regulations under subsection (6) (a) as an approved motorcycle safety helmet, or
- (b) meets the standards and specifications prescribed under subsection (6) (b).

(4) A person who is operating a motorcycle must not permit another person under the age of 16 to ride on the motorcycle in contravention of subsection (2) or (3).

(5) Despite subsections (2) and (3), a person under the age of 16 who contravenes subsection (2) or (3) does not commit an offence.

(6) The Lieutenant Governor in Council may make regulations as follows:

- (a) designating a helmet as an approved motorcycle safety helmet for the purposes of this section;
- (b) prescribing standards and specifications for motorcycle safety helmets;

(c) exempting a person or class of persons from the requirements of subsection (3) and setting out conditions for the exemption.

(7) Without limiting section 210 (7), regulations under subsection (6) of this section may incorporate by reference, with or without modification, in whole or in part, a standard or specification or an approval, certification or designation associated with a standard or specification of or published by a national or international standards association, as amended from time to time before or after the making of the regulation.

(8) Without a warrant, a peace officer may

(a) demand that a person produce a motorcycle safety helmet to allow the peace officer to determine whether the motorcycle safety helmet complies with subsection (3), and

(b) seize the motorcycle safety helmet if, on production of the motorcycle safety helmet, the peace officer has reasonable grounds to believe that a person has contravened subsection (3) or (4).

(9) A person commits an offence if the person obstructs or attempts to obstruct a peace officer acting under the authority of subsection (8).

(10) Except when overtaking and passing other motorcycles, more than 2 operators of motorcycles must not operate their motorcycles side by side in the same direction in the same traffic lane.

**Explanatory Note**

**6 Section 93.2 (1) (a) is amended by striking out "or 94.6" and substituting ", 94.6, 215.43 or 251 (4)".**

**Explanatory Note**

**7 Section 94.1 is amended**

**(a) in subsection (1) by adding "**, or another peace officer," **after** "the peace officer",

**(b) in subsection (3) (b) by striking out "prescribed", and**

**(c) by adding the following subsection:**

(4) A notice of driving prohibition must not be served on a person under this section if a notice of driving prohibition is served on the person under section 215.41.

**Explanatory Note**

**8 Section 94.4 (1) (b) is repealed and the following substituted:**

(b) paying to the superintendent the prescribed hearing fee, and .

**Explanatory Note**

**9 Section 94.5 is amended**

**(a) in subsection (1) by striking out "and" at the end of paragraph (c) and by adding the following paragraph:**

(c.1) any other relevant documents and information forwarded to the superintendent, including peace officers' reports that have not been sworn or solemnly affirmed and the copy of the notice of prohibition, and , **and**

**(b) by adding the following subsections:**

(2.1) Despite subsection (1), the superintendent may, in the superintendent's discretion, proceed with a hearing whether or not the superintendent has received at the time of the hearing all those documents required to be forwarded to the superintendent under section 94.3.

(2.2) The superintendent may determine the weight to be given to any document or other information referred to in subsection (1) (c.1), including any document or information that is not sworn or solemnly affirmed.

**Explanatory Note**

**10 Section 95 is amended**

**(a) in subsection (1) (a) by striking out "or 215," and substituting ", 215, 215.43 or 251 (4),"**

**(b) in subsection (1) by repealing paragraph (b),**

**(c) by repealing subsection (3) and substituting the following:**

(3) If a person is charged with an offence under subsection (1) that pertains to a prohibition under section 92, 93, 94.2, 215.43 or 251 (4), the court hearing the charge may admit into evidence a certificate of the superintendent stating the information required by subsection (4), and if the certificate of the superintendent is admitted into evidence, it is proof that the defendant had knowledge of the prohibition in effect at the time of the alleged offence. ,

**(d) in subsection (4) by striking out "prohibition or suspension" wherever it appears and substituting "prohibition",**

**(e) in subsection 4 (b) (i) (A) by striking out everything after "driving a motor vehicle,"**

**(f) in subsection 4 (b) (i) (B) by striking out everything after "driving a motor vehicle" and substituting ", or",**

**(g) in subsection 4 (b) (ii) by striking out "or whose driver's licence or right to apply for or to obtain a driver's licence the corporation or superintendent intended to suspend," and**

**(h) by repealing subsection (4) (c) and substituting the following:**

(c) contain a certificate of service established under section 94.3 (c), 215.47 (c) or 251 (3) (b) showing that a notice of driving prohibition under section 94.1, 215.41 or 251 (1) (h), as applicable, was personally served on the person subject to the prohibition.

**Explanatory Note**

**11 Section 97.1 (5) is amended by adding "or 215.47" after "94.3".**

**Explanatory Note**

**12 The following section is added:**

**Amount payable to reinstate driver's licence**

**97 . 2** If, under this Act, the *Criminal Code*, the *Youth Justice Act* (Canada) or the *Youth Criminal Justice Act* (Canada),

(a) a person is or was prohibited from driving a motor vehicle,

(b) a person's driver's licence is or was suspended, or

(c) a person's right to apply for or obtain a driver's licence is or was suspended,

except in the case of a licence suspension under section 90.3 or a prohibition under section 215, the amount payable to reinstate a driver's licence following the prohibition or suspension, in addition to any other fee prescribed, is \$250.

**Explanatory Note**

**13 Section 99 (2) (b) is amended by adding "subject to section 232 (3.1) and (3.2)," before "a motor vehicle".**

**Explanatory Note**

**14 Sections 104.1 to 105.95 and Part 7 are repealed.**

**Explanatory Note**

**15 Section 210 is amended**

**(a) in subsection (2) by adding the following paragraph:**

(w) specifying programs and circumstances for the purposes of section 34 (1.1) (d) (ii) and prescribing classes of persons for the purposes of section 34 (1.1) (d) (iii). ,

**(b) in subsection (3.1) (d) by striking out "sections 94.4, 105.5, 105.8 and 105.9;" and substituting "section 94.4;" ,**

**(c) by repealing subsection (3.1) (g), (h) and (m) to (q),**

**(d) by repealing subsection (6.1) and substituting the following:**

(6.1) A regulation under subsection (3.1) (d) of this section or section 215.51 (d) or 268 (b) may prescribe different hearing fees for different types of hearings. , **and**

**(e) in subsection (9) by striking out "section 216, 217 or 218" and substituting "section 216, 217, 218, 268 (a) or (c) or 269".**

**Explanatory Note**

**16 Section 215 is amended**

**(a) by repealing subsection (8) and substituting the following:**

(8) If a driver who is served with a notice of driving prohibition under subsection (3)

(a) forthwith requests a peace officer to administer and does undergo as soon as practicable a prescribed physical coordination test, and

(b) satisfies a peace officer having charge of the matter that his or her ability to drive a motor vehicle is not affected by a drug other than alcohol,

the prohibition from driving is terminated.

(8.1) Despite subsection (8), a driver who is served with a notice of driving prohibition does not have a right to request or undergo a test under subsection (8) (a) if

(a) the peace officer who served the notice first administered a prescribed physical coordination test, and

(b) the peace officer used the results of the test as part of the basis on which the peace officer formed reasonable and probable grounds to believe that the driver's ability to drive a motor vehicle was affected by a drug other than alcohol. ,

**(b) in subsection (10) by adding "or (8)" after "subsection (6)", and**

**(c) in subsection (12) by adding "and physical coordination tests" after "device".**

**Explanatory Note**

**17 Section 215.1 (1) is amended by adding "or (3)" after "section 215 (2)".**

**Explanatory Note**

**18 Section 215.3 (a) is repealed and the following substituted:**

(a) in the case of a notice of driving prohibition served under section 215 (2) (b), the person on whom the notice was served had the right to request and did request that the peace officer administer a test to indicate his or her blood alcohol level but the peace officer failed to provide the person with the opportunity to undergo the test,

(a.1) in the case of a notice of driving prohibition served under section 215 (3) (b), the person on whom the notice was served had the right to request and did request that the peace officer administer a physical coordination test but the peace officer failed to provide the person with the opportunity to undergo the test, or .

**Explanatory Note**

**19 The following sections are added:**

#### **Automatic roadside driving prohibition**

**215.41** (1) In this section, "**driver**" includes a person having the care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion.

(2) In this section and in sections 215.42, 215.43 and 215.5,

**"approved screening device"** means a device prescribed by the Lieutenant Governor in Council for the purposes of this section;

**"fail"** means an indication on an approved screening device that the concentration of alcohol in a person's blood is not less than 80 milligrams of alcohol in 100 millilitres of blood;

**"warn"** means an indication on an approved screening device that the concentration of alcohol in a person's blood is not less than 50 milligrams of alcohol in 100 millilitres of blood.

(3) If, at any time or place on a highway or industrial road,

(a) a peace officer makes a demand to a driver under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device and the approved screening device registers a warn or a fail, and

(b) the peace officer has reasonable grounds to believe, as a result of the analysis, that the driver's ability to drive is affected by alcohol,

the peace officer, or another peace officer, must,

(c) if the driver holds a valid licence or permit issued under this Act, or a document issued in another jurisdiction that allows the driver to operate a motor vehicle, take possession of the driver's licence, permit or document if the driver has it in his or her possession, and

(d) serve on the driver a notice of driving prohibition.

(4) If a peace officer has reasonable grounds to believe that a driver failed or refused, without reasonable excuse, to comply with a demand made under the *Criminal Code* to provide a sample of breath for analysis by means of an approved screening device, the peace officer, or another peace officer, must take those actions described in subsection (3) (c) and (d).

(5) If the driver is not in possession of his or her licence or permit issued under this Act to operate a motor vehicle at the time the driver is served with the notice of driving prohibition, the driver must promptly send the licence or permit to the Insurance Corporation of British Columbia.

(6) The notice of driving prohibition must be in the prescribed form and must contain the following:

- (a) a statement that the driver is immediately prohibited from driving, for the period set out in the notice of prohibition;
- (b) a statement setting out
  - (i) the amount of any monetary penalty imposed on the driver under section 215.44, and
  - (ii) the requirement that the monetary penalty be paid no later than 30 days after the date the notice is served;
- (c) a statement of the right to have the driving prohibition reviewed by the superintendent under section 215.48;
- (d) instructions describing how to apply for that review.

(7) A notice of driving prohibition must not be served on a person under this section if a notice of driving prohibition is served on the person under section 94.1.

### **Opportunity for second analysis**

**215.42** (1) If an analysis of the breath of a person by means of an approved screening device under section 215.41 (3) registers a warn or a fail, a second analysis must be performed if, after a peace officer serves on the person a notice of driving prohibition under section 215.41 (3) (d), the person forthwith requests the second analysis.

(2) A second analysis performed under this section must be performed with a different approved screening device than was used in the analysis under section 215.41 (3).

(3) If a person provides a sample of breath for a second analysis under this section forthwith on being requested to so by the peace officer, the result of the second analysis governs, and any prohibition resulting from the analysis under section 215.41 (3) continues or terminates or is varied accordingly.

### **Effect of driving prohibition under section 215.41**

**215.43** (1) Subject to section 215.42 (3), if a person is served with a notice of driving prohibition under section 215.41 in circumstances where an approved screening device registers a warn, the person is prohibited from driving for

- (a) 3 days, in the case of a first prohibition,
- (b) 7 days, in the case of a second prohibition, or
- (c) 30 days, in the case of a subsequent prohibition.

(2) Subject to section 215.42 (3), if a person is served with a notice of driving prohibition under section 215.41 in circumstances where

- (a) an approved screening device registers a fail, or
- (b) the person refuses or fails to comply with a demand as described in section 215.41 (4),

the person is prohibited from driving for a period of 90 days.

(3) A period of prohibition under this section takes effect immediately on service of the notice of driving prohibition under section 215.41.

(4) For the purposes of subsection (1), a prohibition is

- (a) a first prohibition if a person has not been subject to a previous prohibition under that

subsection within the 5 year period preceding the prohibition,

(b) a second prohibition if a person has been subject to one previous prohibition under that subsection within the 5 year period preceding the prohibition, and

(c) a subsequent prohibition if the person has been subject to 2 or more previous prohibitions under that subsection within the 5 year period preceding the prohibition.

(5) For the purposes of determining whether a prohibition is a second or subsequent prohibition, the prohibition must not be considered to be a previous prohibition unless

(a) the period for requesting a review of the prohibition under section 215.48 has expired, or

(b) if the person requests a review of the prohibition, the period referred to under section 215.5 (6) or (7), as applicable, has expired.

#### **Additional consequences — monetary penalty**

**215 . 44** (1) A person who has been served with a notice of driving prohibition under section 215.41 is also liable to pay, no later than 30 days after the date the notice is served, a monetary penalty in the amount prescribed by regulation.

(2) The monetary penalty must not exceed the amount prescribed by regulation, and in any event must not exceed \$500.

#### **Additional consequences — remedial program**

**215 . 45** If a person is prohibited from driving for a period of 30 or 90 days under section 215.43, the person must register in and attend any remedial program required by the superintendent under section 25.1.

## **Additional consequences — impoundment of vehicle**

**215.46** (1) If a peace officer serves a person with a notice of a 3-day or 7-day driving prohibition under section 215.41 (3) and believes that impoundment of the motor vehicle that the person was driving or operating at the time the notice was served is necessary to prevent the person from driving or operating the motor vehicle before the prohibition expires, the peace officer may cause the motor vehicle to be taken to and impounded at a place directed by the peace officer.

(2) If a peace officer serves a person with a notice of a 30-day or 90-day driving prohibition under section 215.41 (3), the peace officer must cause the motor vehicle that the person was driving or operating at the time the notice was served to be taken to and impounded at a place directed by the peace officer.

## **Duties of peace officer related to driving prohibition under section 215.41**

**215.47** A peace officer who serves a notice of driving prohibition on a person under section 215.41 must promptly forward to the superintendent

(a) the person's licence or permit or any document issued in another jurisdiction that allows the person to operate a motor vehicle, if the peace officer took the licence, permit or document into possession,

(b) a copy of the notice of driving prohibition,

(c) a certificate of service, in the form established by the superintendent, showing that the notice of driving prohibition was personally served on the person subject to the driving prohibition, and

(d) a report, in the form established by the superintendent.

## **Review of driving prohibition under section 215.41**

**215.48** (1) A person may, within 7 days of being served with a notice of driving prohibition under section 215.41, apply to the superintendent for a review of the driving prohibition by

(a) filing an application for review with the superintendent,

(b) paying to the superintendent the prescribed hearing fee, and

(c) if it has not been taken by the peace officer or sent to the superintendent under section 215.41, surrendering to the Insurance Corporation of British Columbia his or her licence or permit to operate a motor vehicle unless the person completes and files with the superintendent a statutory declaration stating that the licence or permit has been lost, stolen or destroyed.

(2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.

(3) An applicant may attach to the application for review any statements or other evidence that the applicant wishes the superintendent to consider.

(4) The filing of an application for review does not stay the driving prohibition.

(5) The superintendent is not required to hold an oral hearing unless

(a) the driving prohibition is for 30 or 90 days, and

(b) the applicant

(i) requests an oral hearing at the time of filing the application for review, and

(ii) pays the prescribed oral hearing fees.

(6) If a person requests an oral hearing and fails to appear on the date and at the time and place arranged for the hearing,

without prior notice to the superintendent, the right to an oral hearing is deemed to have been waived by the person.

### **Considerations on review under section 215.48**

**215 . 49** (1) In a review of a driving prohibition under section 215.48, the superintendent must consider

- (a) any relevant written statements or evidence submitted by the applicant,
- (b) the report of the peace officer forwarded under section 215.47 (d),
- (c) a copy of the notice of driving prohibition,
- (d) any other relevant documents and information forwarded to the superintendent by the peace officer who served the notice of driving prohibition or any other peace officer,
- (e) in the case of an oral hearing, any relevant evidence given or representations made at the hearing, and
- (f) in the case of a second or subsequent prohibition, as described in section 215.43 (4) and (5), the person's driving record.

(2) In a review under section 215.48, no person may be cross examined.

(3) Despite subsection (1), the superintendent may, in the superintendent's discretion, proceed with a hearing whether or not the superintendent has received, at the time of the hearing, all those documents required to be forwarded to the superintendent under section 215.47.

### **Decision of superintendent after review under section 215.48**

**215.5** (1) If, after considering an application for review under section 215.48, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and,

(a) in respect of a 3-day, 7-day or 30-day driving prohibition,

(i) an approved screening device registered a warn, and

(ii) in the case of

(A) a 7-day driving prohibition, the driving prohibition was a second prohibition, or

(B) a 30-day driving prohibition, the driving prohibition was a subsequent prohibition, or

(b) in respect of a 90-day driving prohibition,

(i) an approved screening device registered a fail, or

(ii) the person failed or refused, without reasonable excuse, to comply with a demand made on the person as described in section 215.41 (4),

the superintendent must confirm the driving prohibition, the monetary penalty for which the person is liable under section 215.44 and the impoundment imposed under section 215.46 for the period specified in section 253.

(2) If, after considering an application for review under section 215.48 in respect of a 7-day or 30-day prohibition, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and an approved screening device registered a warn, and determines that

(a) in the case of a 7-day driving prohibition, the prohibition was a first prohibition, or

(b) in the case of a 30-day driving prohibition, the prohibition was either

- (i) a first prohibition, or
- (ii) a second prohibition,

the superintendent must

(c) substitute

- (i) a 3-day driving prohibition, in the circumstances described in paragraph (a) or (b) (i), or
- (ii) a 7-day driving prohibition, in the circumstances described in paragraph (b) (ii), and

(d) vary accordingly the monetary penalty for which the person is liable under section 215.44 and, in respect of any impoundment, section 253 (8) applies.

(3) If, after considering an application for review under section 215.48 in respect of a 90-day prohibition, the superintendent is satisfied that the person was a driver within the meaning of section 215.41 (1) and an approved screening device registered a warn rather than a fail, the superintendent must

(a) substitute a 3-day, 7-day or 30-day prohibition, as applicable, and

(b) vary accordingly the monetary penalty for which the person is liable under section 215.44 and, in respect of the impoundment, section 253 (8) applies.

(4) If, after considering an application for review under section 215.48, the superintendent is satisfied that

(a) the person was not a driver within the meaning of section 215.41 (1),

(b) in the case of a 3-day, 7-day or 30-day driving prohibition, an approved screening device did not register a warn, or

(c) in the case of a 90-day driving prohibition,

(i) an approved screening device did not register a fail or a warn, or

(ii) the person did not fail or refuse to comply with a demand made on the person as described in section 215.41 (4), or had a reasonable excuse for failing to comply with the demand,

the superintendent must

(d) revoke the driving prohibition,

(e) cancel the monetary penalty for which the person would otherwise be liable under section 215.44 and, in respect of any impoundment, section 253 (8) applies, and

(f) if the person held a valid licence or permit issued under this Act to operate a motor vehicle at the time the notice of driving prohibition was served under section 215.41, direct the Insurance Corporation of British Columbia to return any licence or permit to operate a motor vehicle taken into possession by the peace officer or sent to the corporation.

(5) Despite subsection (4) (b), the superintendent must not take any action described in subsection (4) (d), (e) or (f) in respect of a 3-day, 7-day or 30-day driving prohibition if the superintendent is satisfied that, in the circumstances under review, an approved screening device registered a fail instead of a warn.

(6) Subject to subsection (7), the decision of the superintendent and the reasons for the decision must be in

writing and a copy must be sent to the applicant within 21 days of the date the notice of driving prohibition was served on the applicant under section 215.41.

(7) If the superintendent is unable to send the decision to the applicant within the 21 day period set out in subsection (6), the superintendent may extend that period for a period determined by the superintendent.

(8) If the superintendent extends the period for sending a decision to the applicant under subsection (7), the superintendent may

(a) stay the driving prohibition imposed on the applicant under section 215.43 for the period of the extension determined under subsection (7), and

(b) if the applicant held a valid licence or permit issued under this Act to operate a motor vehicle at the time the applicant was served with the notice of driving prohibition under section 215.41, direct the Insurance Corporation of British Columbia to issue to the applicant a temporary driver's licence that expires with the period of extension determined under subsection (7).

(9) The superintendent must promptly give the person notice of an extension made under subsection (7).

(10) The copy referred to in subsection (6) and the notice referred to in subsection (9) must be sent to the person

(a) at the last known address of the person as shown in the records maintained by the Insurance Corporation of British Columbia, or

(b) at the address shown in the application for review, if that address is different from the address in the Insurance Corporation of British Columbia's records.

(11) A notice of extension given under subsection (9) is deemed to be a notice of prohibition for the purposes of section 95 (4) (a) or (b).

### **Regulations – automatic roadside driving prohibitions**

**215.51** Without limiting the authority of the Lieutenant Governor in Council to make regulations under any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing an approved screening device for the purposes of the definition of "approved screening device" in section 215.41 (2);
- (b) prescribing the form of notice of driving prohibition for the purposes of section 215.41 (6);
- (c) for the purposes of section 215.44,
  - (i) prescribing monetary penalties, including prescribing a schedule of increasing monetary penalties based on whether a driving prohibition is a first, second or subsequent prohibition as described in section 215.43 (4), and
  - (ii) prescribing the manner for payment of monetary penalties;
- (d) prescribing hearing fees, including oral hearing fees, for the purposes of section 215.48.

#### **Explanatory Note**

**20 Section 220 (5) (b) and (7) (a) is repealed.**

#### **Explanatory Note**

**21 Section 230 is repealed and the following substituted:**

### **Report of medical condition or impairment**

**230** (1) This section applies to psychologists, optometrists, medical practitioners, nurse practitioners and occupational therapists.

(2) A person referred to in subsection (1) who has a patient 16 years of age or older

(a) who, in the opinion of the person, has a medical condition or functional impairment set out in the regulations, must report to the superintendent

(i) the name, address and medical condition or functional impairment of the patient,

(ii) the name and business contact information of the person, and

(iii) other information the person believes is relevant to the fitness and ability of the patient to drive a motor vehicle, or

(b) who, in the opinion of the person, has a medical condition or functional impairment that can reasonably be expected to affect the fitness and ability of the patient to drive a motor vehicle, may make a report referred to in paragraph (a).

(3) Subsection (2) (a) does not apply in circumstances set out in the regulations.

(4) Subject to subsection (5), no legal proceeding for damages lies or may be commenced or maintained against a psychologist, an optometrist, a medical practitioner, a nurse practitioner or an occupational therapist because of anything done or omitted

(a) in the performance or intended performance of a duty referred to in subsection (2), or

(b) in the exercise or intended exercise of a power referred to in subsection (2).

(5) Subsection (4) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

(6) The Lieutenant Governor in Council may make regulations as follows:

- (a) setting out medical conditions or functional impairments that oblige a person referred to in subsection (1) to report;
- (b) setting out circumstances when the duty to report does not apply.

**Explanatory Note**

**22 Section 232 is amended**

**(a) in subsection (2) by adding "or (3.1)" after "subsection (3)",**

**(b) by adding the following subsections:**

(3.1) Despite subsection (3) and subject to subsection (3.2) and the approval of the superintendent, if a person is authorized, in accordance with section 259 (1.1) of the *Criminal Code*, to operate a motor vehicle during a period of prohibition imposed under section 259 (1) of the *Criminal Code*, the person has the right to apply for or obtain a driver's licence after the expiry of,

- (a) in the case of a first conviction, 3 months,
- (b) in the case of a first subsequent conviction, 6 months, or
- (c) in the case of a second subsequent conviction or an additional subsequent conviction, 12 months.

(3.2) If the superintendent approves a person to apply for or obtain a driver's licence in accordance with subsection (3.1),

- (a) the motor vehicle operated by the person must be equipped with an ignition interlock device, and
- (b) the person must
  - (i) register and participate, to the superintendent's satisfaction, in a remedial

program specified by the superintendent under section 25.1 (1) (b), and  
(ii) participate, to the superintendent's satisfaction, in an ignition interlock program specified by the superintendent under section 25.1 (1) (c), as follows:

- (A) in the case of a first or a first subsequent conviction, for the longer of the remaining portion of the period for which the person would otherwise not be entitled to apply for or obtain a licence under subsection (3) and the remaining portion of the period that the person would otherwise be prohibited from driving under section 259 (1) of the *Criminal Code*;
- (B) in the case of a second subsequent or an additional subsequent conviction, for a period of not less than 5 years.

(3.3) In determining whether a conviction is a first subsequent conviction or a second or an additional subsequent conviction for the purposes of subsections (4), (5) and (6), the only question to be considered is the sequence of convictions, and no consideration may be given to the sequence of the commission of offences or whether any offence occurred before or after any conviction. , **and**

**(c) in subsection (6) by striking out "Despite subsection (3)," and substituting "Despite subsection (5),".**

**Explanatory Note**

### **23 Section 233 is amended**

**(a) in subsection (2) by striking out "or" at the end of paragraph (a), by adding ", or" at the end of paragraph (b) and by adding the following paragraph:**

(c) to apply for a driver's licence at the end of a period referred to in section 232 (3.1) (a), (b) or (c), as applicable, if the person satisfies the requirements under section 232 (3.2) and pays the prescribed fees. ,

**(b) by repealing subsection (3) and substituting the following:**

(3) If

(a) a person registers and participates in an ignition interlock program in accordance with section 232 (3.2), or

(b) in the superintendent's opinion, it is in the public interest for a person in the circumstances referred to in subsection (2) (a) or (b) of this section to participate in an ignition interlock program specified by the superintendent,

and the person pays the prescribed fees for the ignition interlock program, the superintendent may require a statement in, endorsement on, or attachment to the person's driver's licence adding a condition of the driver's licence that the person participate in and complete the ignition interlock program to the satisfaction of the superintendent. ,

**(c) in subsection (6) (a) by adding "on the expiry of the suspension," after "the corporation must,"**

**(d) in subsection (6) (a) (i) by striking out "on the expiry of the suspension," and**

**(e) by repealing subsection (7) (a) and substituting the following:**

(a) if, on the expiry of a suspension under section 232 (2) and (3) (a) or (b), the person has not

(i) attended or participated in and completed a program to the satisfaction of the superintendent, and

(ii) paid the prescribed fees, and .

**Explanatory Note**

**24 The following Part is added:**

## **PART 9 — MOTOR VEHICLE IMPOUNDMENT**

### **Definitions**

**250** In this Part:

**"impound"** includes to immobilize, in a manner approved by the superintendent, a motor vehicle at the place referred to in section 215.46 or 251 (1) (g);

**"irreparable vehicle"** means a motor vehicle that has its title transferred, under an agreement referred to in section 255 (8), to a person who, in accordance with that agreement, is to transfer the title of the motor vehicle to a person who is in the business of wrecking used motor vehicles and who intends to use the motor vehicle for parts or scrap;

**"person who has custody"**, when used in reference to a motor vehicle, includes a person who has, at the direction of a peace officer under section 215.46 or 251 (1) (g), impounded a motor vehicle by immobilizing it;

**"race"** means circumstances in which, taking into account the condition of the highway, traffic, visibility and weather, the driver or operator of a motor vehicle is driving or operating the motor vehicle without reasonable consideration for other persons using the highway or in a manner that may cause harm to an individual by doing any of the following:

(a) outdistancing or attempting to outdistance one or more other motor vehicles;

(b) preventing or attempting to prevent one or more other motor vehicles from passing;

(c) driving at excessive speed in order to arrive at or attempt to arrive at a given destination ahead of one or more other motor vehicles;

**"stunt"** means circumstances in which, taking into account the condition of the highway, traffic, visibility and weather, the driver or operator of a motor vehicle is driving or operating the motor vehicle without reasonable consideration for other persons using the highway or in a manner that is likely to cause harm to an individual or likely to distract, startle or interfere with users of the highway by doing any of the following:

(a) causing any or all of the motor vehicle's tires to lift from the road surface;

(b) causing the motor vehicle to lose traction while turning the motor vehicle;

(c) driving the motor vehicle in a manner to cause the motor vehicle to spin;

(d) driving the motor vehicle in a lane intended for oncoming traffic for longer than necessary to pass another vehicle;

(e) slowing or stopping the motor vehicle in a manner that prevents other motor vehicles from passing or in a manner that blocks or impedes other motor vehicles;

(f) without justification, driving as close as possible to another motor vehicle, a pedestrian, or a fixed object.

### **Impoundment of motor vehicle**

**251** (1) If a peace officer has reasonable grounds to believe that a person

(a) has driven or operated a motor vehicle on a highway while the person is prohibited from driving a motor vehicle under

(i) this Act, or

(ii) the *Youth Justice Act*, the *Youth Criminal Justice Act* (Canada) or the *Criminal Code*,

(b) has driven or operated a motor vehicle on a highway while the person's driver's licence and his or her right to apply for or obtain a driver's licence are suspended under section 89 (1) (b) or (c), 232 or 233,

(c) has driven or operated a motor vehicle on a highway while

(i) the person did not hold a subsisting driver's licence issued under this Act and was not exempt under section 34 from holding a driver's licence issued under this Act, and

(ii) a notice under section 252 was in place on the driving record of the person,

(d) has committed an offence under section 148,

(e) has driven or operated a motor vehicle on a highway in a race or in a stunt and the peace officer intends to charge the person with a motor vehicle related *Criminal Code* offence or an offence under section 144 (1), 146 or 148 of this Act, or

(f) has committed an offence under

(i) section 194 (1) or (2), or

(ii) section 25 (15) by violating a requirement, restriction or condition prescribed under section 25 in relation to a

driver's licence that allows the person to drive or operate a motorcycle, which requirement, restriction or condition is specified in the regulations for the purposes of this provision,

the peace officer or another peace officer must

(g) cause the motor vehicle to be taken to and impounded at a place directed by the peace officer, and

(h) if paragraph (c) of this subsection applies, serve on the person a notice of driving prohibition in the form established by the superintendent.

(2) The notice of driving prohibition referred to in subsection

(1) (h) must contain all of the following:

(a) a statement of the right to have the driving prohibition reviewed by the superintendent under section 259;

(b) instructions describing how to apply for that review;

(c) a statement that unless the person applies for a review under section 259 and the review results in the revocation of a prohibition under section 261, the person is prohibited from driving until he or she is issued a driver's licence under this Act.

(3) A peace officer who serves a notice of driving prohibition under subsection (1) (h) must promptly forward to the superintendent

(a) a copy of the notice of driving prohibition, and

(b) a certificate of service, in the form established by the superintendent, showing that the notice of driving prohibition was personally served on the person subject to the prohibition.

(4) If a person is served with a notice of driving prohibition under subsection (1) (h), the person is prohibited from driving a motor vehicle until the person is issued a driver's licence under this Act or the notice of driving prohibition is revoked under section 261.

(5) If a peace officer is satisfied that the impoundment of a motor vehicle under subsection (1) or section 215.46 would

(a) jeopardize the safety of the occupants of the motor vehicle, or

(b) leave the occupants stranded,

the peace officer must arrange for transportation of the occupants of the motor vehicle to the nearest safe area where they can summon an alternative form of transportation.

(6) Personal property present in a motor vehicle that has been impounded under subsection (1) or section 215.46, other than personal property attached to or used in connection with the operation of the motor vehicle, must be returned to the owner on request.

(7) Despite subsection (1) or section 215.46, if, at any time before a review is conducted under section 256 a peace officer is satisfied that a motor vehicle impounded under subsection (1) of this section or section 215.46 is stolen property, the peace officer must

(a) order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner on payment by the owner or other person of the fees, costs, charges, surcharges and the deposit, if applicable, referred to in section 255 (2), and

(b) promptly give notice to the superintendent of the release of the impounded motor vehicle.

(8) If the person who was driving or operating a motor vehicle at the time the motor vehicle was impounded under

subsection (1) or section 215.46 is not the owner of the motor vehicle, the person must make all reasonable efforts to notify as soon as practicable the owner that the motor vehicle has been impounded.

(9) If the Insurance Corporation of British Columbia issues a driver's licence under this Act to the person who was driving or operating a motor vehicle at the time the motor vehicle was impounded in accordance with subsection (1) (c), the superintendent must, if the fees, costs, charges, surcharges and the deposit, if applicable, referred to in section 255 (2) have been paid to the person who has custody of the motor vehicle, order that the motor vehicle be released to the owner or a person authorized by the owner.

### **Liability for impoundment**

**252** (1) The Insurance Corporation of British Columbia, for the purposes of motor vehicle impoundments in accordance with section 251 (1) (c) and driving prohibitions under section 251 (4), must place a notice on the driving record of the following persons indicating that, if the person drives or operates a motor vehicle on a highway, the motor vehicle is liable to be impounded and the person prohibited from driving under those sections:

(a) a person who has been convicted of an offence under section 24 (1) since the expiry or cancellation of the most recent driver's licence issued to the person under this Act;

(b) a person who has been convicted of an offence under section 24 (1) and who has never held a driver's licence under this Act.

(2) If the Insurance Corporation of British Columbia issues a driver's licence under this Act to a person referred to in subsection (1) (a) or (b),

(a) the corporation must remove a notice placed on the driving record of the person under subsection (1), and

(b) the superintendent must terminate any prohibition served under section 251 (1) (h) as a result of the notice.

### **Period of impoundment**

**253** (1) In this section, "**impounded motor vehicle**" means a motor vehicle that has been impounded by an impoundment

(a) authorized under any of paragraphs (a) to (f) of section 251 (1), and

(b) not revoked under section 258,

but does not include a motor vehicle impounded under section 215.46 or 251 (1) that is released under section 251 (7).

(2) Subject to section 255 (5), a motor vehicle impounded under any of paragraphs (a) to (f) of section 251 (1) is to remain impounded for a period of 7 days from the day it is impounded.

(3) Despite subsection (2) and subject to section 255 (5),

(a) if the owner of a motor vehicle impounded under any of paragraphs (a) to (f) of section 251 (1) has once within the 2 years before the date of the impoundment been the owner of an impounded motor vehicle, the motor vehicle is to remain impounded for a period of 30 days from the day it is impounded, and

(b) if the owner of a motor vehicle impounded under any of paragraphs (a) to (f) of section 251 (1) has on 2 or more occasions within the 2 years before the date of the impoundment been the owner of an impounded motor vehicle, the motor

vehicle is to remain impounded for a period of 60 days from the day it is impounded.

(4) If a motor vehicle is subject to the period of impoundment authorized under subsection (3) (a) or (b), the superintendent must give to

(a) the registered owner of the motor vehicle, and

(b) the person who has custody of the motor vehicle under the impoundment

notice that, unless the superintendent revokes the impoundment under section 258, the motor vehicle will not be released until the expiry of the period of impoundment authorized under subsection (3) (a) or (b) of this section, as applicable.

(5) The notice required by subsection (4) (a) must be sent by mail to the last known address of the registered owner as shown in the records maintained by the Insurance Corporation of British Columbia.

(6) Subject to section 255 (5), a motor vehicle impounded under section 215.46 (1) is to remain impounded for a period equal to the period that the person referred to in section 215.46 (1) is prohibited from driving under section 215.43 (1).

(7) Subject to section 255 (5), a motor vehicle impounded under section 215.46 (2) is to remain impounded for a period of 30 days from the day it is impounded.

(8) If a driving prohibition is substituted, varied or revoked under section 215.5, the superintendent must

(a) substitute or vary to the same extent or revoke the corresponding impoundment imposed under section 215.46, and

(b) subject to the lien described in section 255 (2) and to the expiry of the period of impoundment in

the case of a substitution or variance, order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

### **Duties of peace officer**

**254** (1) A peace officer who impounds a motor vehicle under section 215.46 or 251 (1) must

- (a) complete a notice of impoundment,
- (b) give a copy of the notice of impoundment to the driver and the person who has custody of the motor vehicle, and
- (c) forward to the superintendent
  - (i) a report, in the form established by the superintendent, and
  - (ii) a copy of the notice of impoundment.

(2) When the superintendent receives a copy of the notice of impoundment under subsection (1) (c) (ii), the superintendent must promptly send a copy of that notice by mail to the last known address of the registered owner of the motor vehicle as shown in the records maintained by the Insurance Corporation of British Columbia.

(3) The notice of impoundment must contain

- (a) a statement of the right to have the impoundment reviewed by the superintendent under section 256,
- (b) instructions describing how to apply for that review,
- (c) a statement that unless the owner of the motor vehicle applies for a review under section 256, the motor vehicle will be impounded for the period authorized under section 253,

(d) a statement that the filing of an application for review does not stay the impoundment of the motor vehicle, and

(e) a statement that if the owner of the motor vehicle does not pay the fees, costs, charges, surcharges and the deposit, if applicable, referred to in section 255 (2), the motor vehicle may be disposed of under the *Warehouse Lien Act* or under section 255 (7) of this Act.

### **Storage of impounded motor vehicle**

**255** (1) A motor vehicle impounded under section 215.46 or 251

(1) is to be stored at a place directed by the peace officer.

(2) The following constitute a lien on the motor vehicle:

(a) fees, costs, charges and surcharges prescribed by the superintendent in respect of the transportation, towing, care, storage, disposition and other related activities respecting the impoundment of the motor vehicle;

(b) charges for searches and registrations under the *Personal Property Security Act* that are reasonably necessary to fulfill the obligations of the person who has custody of the motor vehicle under the impoundment;

(c) the amount prescribed for a deposit, whether the deposit is paid in advance or not, for a device used to immobilize a motor vehicle, if there is damage to the immobilization device at the end of the period of impoundment.

(3) The lien described in subsection (2) may be enforced under the *Warehouse Lien Act* or under subsection (7) of this section.

(4) The person who has custody of a motor vehicle impounded under section 215.46 or 251 (1) must notify the superintendent if that motor vehicle is sold under the *Warehouse Lien Act*.

(5) Subject to sections 251 (7) and (9), 253 (8), 258, 262 and 263 and to subsection (9) of this section, a motor vehicle impounded under section 215.46 or 251 (1) must remain impounded until the expiry of the applicable impoundment period set out in section 253, and for a further period that expires when

(a) the lien is paid, if it is paid after the expiry of the applicable period set out in section 253,

(b) the date referred to in subsection (6) of this section is reached, if an agreement referred to in that subsection is in place, or

(c) the motor vehicle is disposed of

(i) under the *Warehouse Lien Act*, or

(ii) under subsection (7) of this section.

(6) If a person who has custody of a motor vehicle impounded under section 215.46 or 251 (1) enters into an agreement with the owner of the motor vehicle respecting the earliest date, after the applicable impoundment period has expired, before which the person will not begin to take action to dispose of the motor vehicle under subsection (7) of this section or under the *Warehouse Lien Act*, the person who has custody of the motor vehicle must notify the superintendent of the agreement as soon as practicable.

(7) If a motor vehicle impounded under section 215.46 or 251 (1) remains impounded after the expiration of the impoundment period referred to in section 253, the person who has custody of the motor vehicle may, with the approval of the superintendent, dispose of the motor vehicle by sale or otherwise, if the person

(a) surrenders to the superintendent any number plates, issued under this Act, from the motor vehicle, and

(b) files with the superintendent a statutory declaration declaring that

(i) the amount of the person's lien on the motor vehicle exceeds the amount calculated by subtracting \$1 000 from the person's estimate of the value of the motor vehicle,

(ii) the person, at least 14 days before making the statutory declaration, sent to the registered owner of the motor vehicle, by mail, a notice that the person intends to dispose of the motor vehicle if the lien is not paid, and

(iii) the person has obtained a certificate issued under the *Personal Property Security Act* showing that no security interest is registered against the motor vehicle under that Act.

(8) A person who has custody of a motor vehicle impounded under section 215.46 or 251 (1) may enter into an agreement, in a form established by the superintendent, with the owner of the motor vehicle according to which the title of the motor vehicle is to be transferred to the person as an irreparable vehicle.

(9) If an agreement has been entered into under subsection (8), the lien under subsection (2) held by the person who has custody of the motor vehicle is discharged and the person must, whether or not the applicable impoundment period set out in section 253 has expired, dispose of the motor vehicle as an irreparable vehicle, provided that the person

- (a) surrenders to the superintendent any number plates, issued under this Act, from the motor vehicle,
- (b) files with the superintendent
  - (i) a copy of the agreement, and
  - (ii) a statutory declaration declaring that the person has obtained a certificate issued under the *Personal Property Security Act* showing that no security interest is registered against the motor vehicle under that Act,
- (c) delivers to the Insurance Corporation of British Columbia within 10 days after the transfer
  - (i) a notice of transfer and change in status of the motor vehicle, in the form required by the corporation, signed by the owner of the motor vehicle and the person who has custody of the motor vehicle, and
  - (ii) the fee prescribed under section 17.1 (3) (b) for its filing, and
- (d) obtains the approval of the superintendent.

(10) The notice of transfer referred to in subsection (9) (c) (i) may be delivered to the Insurance Corporation of British Columbia, a government agent or a person authorized in writing by the corporation for the purposes of section 17 (4), but the person delivering the notice of transfer must at the same time surrender the licence last issued under section 3 for the motor vehicle, and the person to whom it is surrendered must endorse on it a memorandum of the notice of transfer and the date of its delivery to him or her.

(11) If the superintendent approves the disposal of a motor vehicle under subsection (7), the superintendent

- (a) must

(i) direct the Insurance Corporation of British Columbia to cancel any vehicle licence issued under this Act with respect to the motor vehicle,

(ii) direct the Insurance Corporation of British Columbia to transfer the registration of the motor vehicle to the person who has custody of the motor vehicle under the impoundment,

(iii) direct the Insurance Corporation of British Columbia to forward any refund from the cancellation of the vehicle licence to the previous registered owner of the motor vehicle, and

(iv) forward to the Insurance Corporation of British Columbia any number plates that have been surrendered to the superintendent under subsection (7), and

(b) may, after the expiry of 30 days from the day the superintendent approved the disposal, direct the Insurance Corporation of British Columbia to refuse, under section 26 (1) or (2) or both, to issue to the person who was the owner of the motor vehicle when it was impounded a driver's licence or a licence and corresponding number plates for a motor vehicle or trailer or both until the superintendent rescinds the direction.

(12) If the superintendent approves the disposal of a motor vehicle under subsection (9), the superintendent must do everything set out in subsection (11) (a).

(13) If the amount of the lien described in subsection (2) is discharged by disposal of the motor vehicle under subsection (7) or by payment by the person who was the owner of the

motor vehicle at the time of its impoundment or by a combination of both,

(a) the person who made a filing under subsection (7) or who received the payment must notify the superintendent of the discharge, and

(b) after receiving the notice referred to in paragraph (a) of this subsection, the superintendent must rescind the direction to the Insurance Corporation of British Columbia, if any, made under subsection (11) (b).

(14) A person who contravenes a requirement under subsection (9) or (10) commits an offence and is liable on conviction to a fine of not more than \$2 000 or to imprisonment for not more than 6 months, or to both.

### **Review of impoundment**

**256** (1) The owner of a motor vehicle impounded under section 215.46 (2) for a period of 30 days or under section 251 (1) for a period of 30 or 60 days may, within 15 days after the impoundment begins, apply to the superintendent for a review of the impoundment by

(a) filing an application for review with the superintendent, and

(b) paying to the superintendent the prescribed hearing fee.

(2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.

(3) An applicant may attach to the application for review any statements or other evidence that the applicant wishes the superintendent to consider.

(4) The filing of an application for review does not stay the impoundment of the motor vehicle.

(5) The superintendent is not required to hold an oral hearing unless the applicant

(a) requests an oral hearing at the time of filing the application for review, and

(b) pays the prescribed oral hearing fees.

(6) If a person requests an oral hearing and fails to appear on the date and at the time and place arranged for the hearing, without prior notice to the superintendent, the right to an oral hearing is deemed to have been waived by the person.

### **Considerations for review of impoundment**

**257** In a review under section 256 of a motor vehicle impoundment, the superintendent

(a) must consider the report of the peace officer forwarded under section 254 (1) (c) (i), and

(b) may consider

(i) the driving record of the person named as the driver of the motor vehicle in a copy of the notice of impoundment completed under section 254, or

(ii) information and records kept by the superintendent under this Act in relation to any previous impoundments under section 215.46 or 251 (1), or under section 104.1 (1), 105 (1), 105.1 (1), 242 (1) or 243 (1) before their repeal, of motor vehicles owned by the person who applied for the review.

### **Decision of superintendent on review of impoundment**

**258** (1) If, after considering an application for review made under section 256 by an owner who was not the driver or operator of the motor vehicle at the time the motor vehicle was impounded, the superintendent is satisfied

(a) that the driver or operator was in possession of the motor vehicle without the knowledge or consent of the owner,

(b) that the owner exercised reasonable care and diligence in entrusting the motor vehicle to the person who was, at the time of the impoundment, in possession of the motor vehicle,

(c) if the impoundment was made under section 251 (1) (a), that the driver or operator was not prohibited from driving under any of the provisions referred to in section 251 (1) (a) at the time the motor vehicle was impounded,

(d) if the impoundment was made under section 251 (1) (b), that the driver's or operator's driver's licence and his or her right to apply for or obtain a driver's licence were not suspended under section 89 (1) (b) or (c), 232 or 233 at the time the motor vehicle was impounded, or

(e) if the impoundment was made under section 251 (1) (c), that

(i) at the time the motor vehicle was impounded, the driver or operator

(A) held a subsisting driver's licence issued under this Act, or

(B) was exempt under section 34 from holding a driver's licence issued under this Act, or

(ii) a notice should not have been placed on the driving record of the driver under section 252 (1),

the superintendent must

(f) revoke the impoundment, and

(g) subject to the lien described in section 255 (2), order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

(2) If, after considering an application for review made under section 256 by an owner who was the driver or operator of the motor vehicle at the time the motor vehicle was impounded, the superintendent is satisfied

(a) if the impoundment was made under section 251 (1) (a), that the owner

(i) was not prohibited from driving under any of the provisions referred to in section 251 (1) (a) at the time the motor vehicle was impounded, or

(ii) before he or she drove or operated the motor vehicle, had no reason to believe that he or she was prohibited from driving under any of the provisions referred to in section 251 (1) (a),

(b) if the impoundment was made under section 251 (1) (b), that

(i) the owner's driver's licence and his or her right to apply for or obtain a driver's licence were not suspended under section 89 (1) (b) or (c), 232 or 233 at the time the motor vehicle was impounded, or

(ii) before he or she drove or operated the motor vehicle, the owner had no reason to believe that his or her driver's licence and his or her right to apply for or obtain a driver's licence were suspended under a section referred to in subparagraph (i) of this paragraph, or

(c) if the impoundment was made under section 251 (1) (c), that

(i) at the time the motor vehicle was impounded, the owner

(A) held a subsisting driver's licence issued under this Act, or

(B) was exempt under section 34 from holding a driver's licence issued under this Act,

(ii) before he or she drove or operated the motor vehicle, the owner had a reasonable belief that he or she

(A) held a subsisting driver's licence issued under this Act, or

(B) was exempt under section 34 from holding a driver's licence issued under this Act, or

(iii) a notice should not have been placed on the driving record of the owner under section 252 (1),

the superintendent must

(d) revoke the impoundment, and

(e) subject to the lien described in section 255 (2), order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

(3) If, after considering an application for review made under section 256 by an owner of a motor vehicle impounded under section 251 (1), the superintendent is satisfied that the period of impoundment determined under section 253 is not supported by the facts of the case, the superintendent must

(a) adjust the period of impoundment in accordance with section 253, or

(b) if the period of impoundment has expired, subject to the lien described in section 255 (2), order the person who has custody of the motor vehicle to release the motor vehicle to the owner or a person authorized by the owner.

(4) The decision of the superintendent under subsection (1), (2) or (3), and the reasons for the decision, must be in writing and a copy must be sent to the applicant within 7 days of the date the application was considered or the oral hearing was held.

(5) The copy referred to in subsection (4) must be sent to the applicant

(a) at the last known address of the applicant as shown in the records maintained by the Insurance Corporation of British Columbia, or

(b) at the address shown in the application for review, if that address is different from the address in the Insurance Corporation of British Columbia's records.

### **Review of driving prohibition**

**259** (1) A person may, after being served with a notice of driving prohibition under section 251 (1) (h), apply to the superintendent for a review of the driving prohibition by

(a) filing an application for review with the superintendent, and

(b) paying to the superintendent the prescribed hearing fee.

(2) An application for review must be in the form, contain the information and be completed in the manner required by the superintendent.

(3) An applicant may attach to the application for review any written statements or other evidence that the applicant wishes the superintendent to consider.

(4) The superintendent must conduct a review under this section on the basis of written submissions and must not hold an oral hearing.

### **Considerations for review of driving prohibition**

**260** In a review of a driving prohibition under section 259, the superintendent may consider only

(a) the driving record of the person on whom the notice of driving prohibition was served, and

(b) relevant information provided by the person on whom the notice of driving prohibition was served.

### **Decision of superintendent on review of driving prohibition**

**261** If, after considering an application for review under section 259, the superintendent is satisfied that

(a) the person, at the time the notice of driving prohibition was served, was exempt under section 34 from holding a driver's licence issued under this Act,

(b) the person has, since the notice of driving prohibition was served, become exempt under section 34 from holding a driver's licence issued under this Act, or

(c) a notice should not have been placed on the driving record of the person under section 252 (1),

the superintendent must

(d) revoke the notice of driving prohibition, and

(e) if the superintendent is satisfied of the matter referred to in paragraph (c) of this subsection,

direct the Insurance Corporation of British Columbia to remove the notice referred to in that paragraph.

### **Early release of motor vehicle on grounds of economic hardship**

**262** (1) A person who

(a) is the owner of a motor vehicle impounded under section 215.46 (2) for a period of 30 days or under section 251 (1) for a period of 30 or 60 days or, if not the owner of the impounded motor vehicle, a person authorized by the owner, and

(b) has a valid driver's licence and is not prohibited from driving,

may, within 15 days after the impoundment of a motor vehicle begins under section 215.46 (2) or 251 (1), apply to the superintendent under subsection (2) of this section for the release of the motor vehicle.

(2) An applicant must

(a) apply in a form acceptable to the superintendent,

(b) provide the superintendent with any information the superintendent may reasonably require,

(c) pay to the superintendent the prescribed hearing fee, and

(d) establish, to the satisfaction of the superintendent, that the owner is eligible for early release of the motor vehicle on the grounds set out in subsection (3).

(3) The grounds for an early release under this section are that

- (a) the motor vehicle is used in an active sole proprietorship, partnership or company,
- (b) the sole proprietorship, partnership or company has a reasonable prospect for generating income that is dependent on the impounded motor vehicle, and
- (c) the prospective income dependent on the impounded motor vehicle represents a substantial proportion of the anticipated income to be earned by the sole proprietorship, partnership or company during the period of impoundment, or otherwise imposes an economic hardship on the sole proprietorship, partnership or company.

(4) If the superintendent is satisfied, with respect to an application, that the grounds set out in subsection (3) have been established, the superintendent may, subject to the lien described in section 255 (2),

- (a) with the consent of the owner of the motor vehicle or a person authorized by the owner, and
- (b) on receiving payment of the prescribed vehicle release fee,

order the person who has custody of the motor vehicle under the impoundment to release the motor vehicle to the applicant.

(5) If a motor vehicle has been released under this section during the course of an impoundment that occurred in respect of a particular period during which

- (a) the person referred to in section 251 (1) (a) was prohibited from driving a motor vehicle,
- (b) the person's driver's licence and his or her right to apply for or obtain a driver's licence was suspended under section 89 (1) (b) or (c), 232 or 233, or

(c) the person referred to in section 251 (1) (c) failed to hold a subsisting driver's licence issued under this Act and was not exempt under section 34 from holding a driver's licence issued under this Act,

no further application for the release of a motor vehicle may be made under this section with respect to an impoundment that occurred in respect of that same period.

### **Early release of motor vehicle on compassionate grounds**

**263** (1) A person who

(a) holds a valid driver's licence and is not prohibited from driving, and

(b) is cohabiting with the owner of a motor vehicle at the time the motor vehicle is impounded under section 215.46 (2) for a period of 30 days or under section 251 (1) for a period of 30 or 60 days,

is eligible to apply for the release of the motor vehicle under subsection (2) of this section.

(2) An eligible person may, within 15 days after the impoundment of a motor vehicle begins under section 215.46 (2) or 251 (1), apply to the superintendent for the release of the motor vehicle on the grounds that

(a) the impoundment of the motor vehicle

(i) will cause the eligible person to suffer a loss or curtailment of employment or educational opportunities, or

(ii) will prevent the eligible person, or someone under the care of the eligible person, from obtaining medical treatment, and

(b) the eligible person has no reasonable alternative form of transportation, including public transportation, that would

(i) prevent the loss or curtailment referred to in paragraph (a) (i) of this subsection, or

(ii) allow the medical treatment referred to in paragraph (a) (ii) to be obtained.

(3) An applicant must

(a) apply in a form acceptable to the superintendent,

(b) provide the superintendent with any information the superintendent may reasonably require, and

(c) pay to the superintendent the prescribed hearing fee.

(4) If the superintendent is satisfied, with respect to an application, that the grounds set out in subsection (2) have been established, the superintendent may,

(a) with the consent of the owner of the motor vehicle, and

(b) on receiving payment of the prescribed vehicle release fee,

subject to the lien described in section 255 (2), order the person who has custody of the motor vehicle under the impoundment to release the motor vehicle to the applicant.

(5) If a motor vehicle has been released under this section during the course of an impoundment that occurred in respect of a particular period during which

(a) the person referred to in section 251 (1) (a) was prohibited from driving a motor vehicle,

(b) the person's driver's licence and his or her right to apply for or obtain a driver's licence was suspended under section 89 (1) (b) or (c), 232 or 233, or

(c) the person referred to in section 251 (1) (c) failed to hold a subsisting driver's licence issued under this Act and was not exempt under section 34 from holding a driver's licence issued under this Act,

no further application for the release of a motor vehicle may be made under this section with respect to an impoundment that occurs in respect of that same period.

### **Release of motor vehicle after impoundment period**

**264** (1) Subject to subsection (2), when the impoundment period referred to in section 253 has expired, or, if an agreement referred to in section 255 (6) is in place, the date for release under that agreement has been reached, the owner or a person authorized by the owner may request that the motor vehicle be released by

(a) completing a request for release of the motor vehicle, and

(b) delivering the request to the superintendent.

(2) A request under subsection (1) need not be made to have an impounded motor vehicle released if the impoundment period for the motor vehicle was less than 30 days.

(3) A request under subsection (1) must be in the form, contain the information and be completed in the manner required by the superintendent.

(4) Subject to the lien described in section 255 (2), the superintendent may, on receiving a request under subsection (1) of this section, order that the motor vehicle be released to the owner or a person authorized by the owner.

(5) Subject to section 255 (5), a person who has custody of a motor vehicle impounded under section 215.46 or 251 (1) must release the motor vehicle when ordered to do so by the superintendent.

### **Owner's right against driver**

**265** The owner of a motor vehicle impounded under section 215.46 or 251 (1) may recover from the person who was the driver or operator at the time the motor vehicle was impounded, as a debt in any court of competent jurisdiction, the fees, costs, charges, surcharges and deposit, if applicable, under section 255 (2) that the owner has paid with respect to the impoundment.

### **Superintendent may indemnify for wrongful impoundment**

**266** If the superintendent is satisfied that a motor vehicle has been wrongfully impounded under section 215.46 or 251 (1), the superintendent may

- (a) order the release of the motor vehicle from impoundment,
- (b) waive any fee, cost or charge payable to the superintendent, and
- (c) indemnify the owner of the motor vehicle for any direct cost incurred by the owner in respect of the impoundment of the motor vehicle.

### **Appropriation**

**267** Money required for the purposes of a waiver of any fee, cost, charge or indemnification under section 266 may be paid out of the consolidated revenue fund without any other appropriation other than this section.

### **Power to make regulations — Lieutenant Governor in Council**

**268** Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

- (a) specifying a requirement, restriction or condition for the purposes of section 251 (1) (f) (ii);
- (b) prescribing hearing fees for the purposes of sections 256 (1) (b) and (5) (b), 259 (1) (b), 262 (2) (c) and 263 (3) (c);
- (c) prescribing vehicle release fees for the purposes of sections 262 (4) (b) and 263 (4) (b).

### **Power to make regulations – superintendent**

**269** The superintendent may make regulations prescribing the fees, costs, charges, surcharges and the deposit amount for the purposes of section 255 (2).

## **Transitional Provision and Consequential Amendments**

### **Explanatory Note**

### **Motor Vehicle Act transition – application of sections 104.1 to 105.95 and Part 7**

**25** (1) Despite the repeal of sections 104.1 to 105.95 and Part 7 of the *Motor Vehicle Act* by this Act, sections 104.1 to 105.95 and Part 7 of that Act, except sections 104.1 (1), (2), (4) and (5), 104.2, 105 (1), (2) and (3), 105.1 (1), (2) and (4), 241, 242 (1) and (2) and 243 (1), (2) and (4), as they read immediately before their repeal, continue to apply, so far as they are applicable, if the vehicle that is the subject of the impoundment was impounded under section 104.1 (1), 105 (1), 105.1 (1), 242 (1) or 243 (1), as the case may be, before the date Part 9 of the *Motor Vehicle Act*, as enacted by this Act, comes into force.

(2) Despite subsection (1),

(a) sections 251 (1) (c) (ii) and 252 (2) (a) of the *Motor Vehicle Act* as enacted by this Act must be read as including a notice placed by the Insurance Corporation of British Columbia on the driving record of the person under section 104.2 (1) of the *Motor Vehicle Act* before the repeal of that section by this Act, and

(b) the definition of "impounded motor vehicle" in section 253 (1) of the *Motor Vehicle Act* as enacted by this Act must, for the purposes of section 253 (3) of the *Motor Vehicle Act* as enacted by this Act, be read as

(i) including a motor vehicle that was impounded under section 104.1 (1), 105 (1), 105.1 (1), 242 (1) or 243 (1) of the *Motor Vehicle Act* before the date that Part 9 of that Act as enacted by this Act comes into force, and

(ii) excluding a motor vehicle referred to in subparagraph (i) of this paragraph that was released under section 104.1 (4.1), 105.1 (5), 242 (4) or 243 (5) of the *Motor Vehicle Act* before the date Part 9 of that Act as enacted by this Act comes into force.

### ***Motor Vehicle Amendment Act (No. 2), 1997***

#### **Explanatory Note**

***26 Section 8 of the Motor Vehicle Amendment Act (No. 2), 1997, S.B.C. 1997, c. 31, as it amends section 220 (5) (b) (i) and (ii) and (7) (a) (i) and (ii) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, is repealed.***

#### **Explanatory Note**

***27 Section 31 of the Motor Vehicle Amendment Act (No. 2), 1997, S.B.C. 1997, c. 31, is repealed.***

## **Traffic Safety Statutes Amendment Act, 1997**

### **Explanatory Note**

**28 Sections 20 (a), 23 (a) and 30 (b) of the Traffic Safety Statutes Amendment Act, 1997, S.B.C. 1997, c. 43, are repealed.**

### **Commencement**

**29** This Act comes into force by regulation of the Lieutenant Governor in Council.

### **Explanatory Notes**

SECTION 1: [**Motor Vehicle Act, section 25**] allows the minister to make regulations specifying the models of motorcycles that a class of persons such as learner motorcyclists may drive.

SECTION 2: [**Motor Vehicle Act, section 26**] permits ICBC to refuse to issue a driver's licence, permit, or licence and licence plates to a person who fails to pay a monetary penalty or on direction of the superintendent under section 255 (11) (b) as added to the Act by this Bill.

SECTION 3: [**Motor Vehicle Act, section 26.1**] permits ICBC to cancel the driver's licence of a person who fails to pay a monetary penalty.

SECTION 4: [**Motor Vehicle Act, section 34**] authorizes an exemption from the requirements under the Act respecting the holding of a driver's licence issued under the Act for a prescribed class of persons in specified programs or circumstances working in British Columbia for less than a year.

SECTION 5: [**Motor Vehicle Act, sections 53 to 55, 194 and 221**] consolidates and updates provisions relating to motorcycles, adds provisions requiring the use of foot pegs, adds offences and allows seizure of a motorcycle safety helmet in specified circumstances.

SECTION 6: [**Motor Vehicle Act, section 93.2**] adds cross-references consequential to amendments made by this Bill.

SECTION 7: [**Motor Vehicle Act, section 94.1**]

- permits a peace officer, other than the peace officer who first had grounds to believe a person operated a motor vehicle with a blood alcohol concentration over .08 or made a demand on the person to provide a breath sample, to serve a notice of driving prohibition;
- provides that a person cannot be prohibited from driving under both section 94.1 and section 215.41 of the Act.

SECTION 8: **[Motor Vehicle Act, section 94.4]** deletes an unnecessary reference, as no application fee is payable for a review of a driving prohibition.

SECTION 9: **[Motor Vehicle Act, section 94.5]** permits the superintendent, on review of a driving prohibition, to consider additional relevant documents and information, including information that has not been sworn or affirmed, to determine what weight should be given to these documents and to proceed with the hearing in the absence of receiving all the documents required to be forwarded under section 94.3 of the Act.

SECTION 10: **[Motor Vehicle Act, section 95]** adds cross-references consequential to amendments made by this Bill, repeals spent provisions and makes amendments consequential to the repeal of the spent provisions.

SECTION 11: **[Motor Vehicle Act, section 97.1]** adds a cross-reference consequential to amendments made by this Bill.

SECTION 12: **[Motor Vehicle Act, section 97.2]** sets out the amount payable, in addition to any other prescribed fees, to reinstate a driver's licence following a driving prohibition or licence suspension.

SECTION 13: **[Motor Vehicle Act, section 99]** adds a cross-reference consequential to amendments made by this Bill.

SECTION 14: **[Motor Vehicle Act, sections 104.1 to 105.95 and Part 7]** repeals motor vehicle impoundment provisions to be replaced by a new Part 9 of the Act added by this Bill.

SECTION 15: **[Motor Vehicle Act, section 210]**

- authorizes the making of regulations for the purposes of section 34 of the Act as amended by this Bill;

- makes amendments consequential to amendments made to the Act by this Bill.

**SECTION 16: [*Motor Vehicle Act, section 215*]**

- permits a person, whose ability to drive a peace officer believes to be affected by a drug other than alcohol, to request the peace officer to administer a physical coordination test, and provides that if the person satisfies the peace officer that his or her ability to drive is not affected, his or her prohibition from driving is terminated;
- adds authority to prescribe physical coordination tests for the purposes of the section.

SECTION 17: [*Motor Vehicle Act, section 215.1*] permits a person to request a review of a driving prohibition imposed because of a person's ability to drive being affected by a drug other than alcohol.

SECTION 18: [*Motor Vehicle Act, section 215.3*] distinguishes the grounds for revoking a driving prohibition depending on whether the prohibition was based on a person's ability to drive being affected by alcohol or by a drug other than alcohol.

**SECTION 19: [*Motor Vehicle Act, sections 215.41 to 215.51*]**

- adds new graduated driving prohibitions of 3, 7, 30 or 90 days in circumstances where a person operates a motor vehicle with a blood alcohol concentration equal to or greater than .05;
- provides for monetary penalties, impoundment of vehicles and the requirement to enroll in a remedial program as additional consequences in association with these new driving prohibitions;
- provides for reviews of such driving prohibitions by the superintendent;
- adds authority for the Lieutenant Governor in Council to make regulations prescribing hearing fees, the proposed monetary penalties, and approved screening devices in relation to the proposed graduated driving prohibitions.

SECTION 20: **[Motor Vehicle Act, section 220]** eliminates the ability of a person to obtain a certificate from the Superintendent of Motor Vehicles or from a medical practitioner exempting the person from the requirement to wear a seatbelt.

SECTION 21: **[Motor Vehicle Act, section 230]** amends the reporting requirements of certain health professionals in relation to the ability of their patients to drive.

SECTION 22: **[Motor Vehicle Act, section 232]**

- permits a person who has been convicted of an alcohol-related driving offence and is subject to a driving prohibition under the *Criminal Code* to have a period of licence suspension shortened after completing a specified portion of the suspension if the person registers in a remedial program and, during the balance of the period of suspension, participates in an ignition interlock program, only driving a vehicle that is equipped with an ignition interlock device;
- clarifies that in determining the sequence of convictions, only the convictions themselves may be considered, and not the sequence of the commission of the offences leading to the convictions;
- clarifies the time periods used for determining the appropriate length of driving suspensions, depending on when a previous conviction occurred.

SECTION 23: **[Motor Vehicle Act, section 233]**

- requires the superintendent to notify the Insurance Corporation of British Columbia when a person is entitled to apply for licence reinstatement under the proposed amendments to the Act respecting participation in an ignition interlock program;
- permits the superintendent to require a statement in, endorsement on, or attachment to a person's driver's licence in respect of participation in an ignition interlock program under the proposed amendments to section 233 of the Act permitting shortening of a licence suspension;

- clarifies that the obligation for the Insurance Corporation of British Columbia to reinstate a driver's licence arises on the expiry of a period of suspension;
- adjusts formatting.

SECTION 24: [**Motor Vehicle Act, Part 9**] adds a new Part to the Act setting out a motor vehicle impoundment scheme.

SECTION 25: [**Motor Vehicle Act transition – application of sections 104.1 to 105.95 and Part 7**] provides transition from the provisions to be repealed and the new Part 9 of the *Motor Vehicle Act* added by this Bill.

SECTION 26: [**Motor Vehicle Amendment Act (No. 2), 1997, section 8**] is self-explanatory.

SECTION 27: [**Motor Vehicle Amendment Act (No. 2), 1997, section 31**] is self-explanatory.

SECTION 28: [**Traffic Safety Statutes Amendment Act, 1997, sections 20, 23 and 30**] is self-explanatory.