

(b) secure the sample in a container that is wrapped and sealed; and

(c) sign and date the container for identification purposes;

and the accused where the accused was present and the Inspector or *Gazetted* Officer shall also sign and initial the container.

(4) The accused may request that his attorney-at-law be present while a sample is being taken under subsection (3) and the attorney-at-law shall also sign and date the container for identification purposes.

(5) Where subsection (2) has been complied with in relation to a sample, the authorised analyst who took the sample shall sign and date a certificate in the form set out in the Second Schedule and who has had that certificate countersigned and dated by the Inspector or *Gazetted* Officer who was present while the sample was being taken, shall deliver the certificate, along with the sample, to the officer investigating the matter.

(6) Where an authorised analyst has made an analysis of a sample taken under subsection (3), he shall make and sign a report to the Commissioner of Police—

(a) specifying the nature and the amount of the sample; and

(b) setting forth the result of his analysis.

(7) Within 28 days of receipt of a report under subsection (6), the Commissioner shall serve copies of the certificate under subsection (5) and the report on the accused.

#### **12D. Certificate and report under section 12C to be *prima facie* evidence**

In any criminal proceeding in which it is desired to use a sample in evidence by virtue of section 12C, a certificate rendered under subsection (5), and of a report made under subsection (6), of that section relating to the sample shall, without further proof, be *prima facie* evidence of the matters respectively stated in the certificate and the report; and the report shall, without further proof, be *prima facie* evidence of the authorisation of the authorised analyst.

#### **12E. Commissioner to dispose of bulk**

As soon as may be practicable after receiving an authorised analyst's report under section 12C(5) relating to a sample, the Commissioner of Police after consultation with the Director of Public Prosecutions shall dispose of the remainder of the substance from which the sample was taken by destroying it or otherwise dealing with it as the circumstances may require.”



### **THE EVIDENCE (AMENDMENT) ACT, 2009**

**No. 8 of 2009**

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(a) on the instructions of the Commissioner of Police as he considers necessary for use as evidence in a criminal matter to be tried summarily; and

(b) on the instructions of the Director of Public Prosecutions as he considers necessary for use as evidence in a criminal trial on an indictable offence.

(9) Where it appears that the goods or moveable property are owned by any person other than the accused, they may be returned to the owner in accordance with the instructions of the Director of Public Prosecutions or the Commissioner of Police as the case may be, on the written undertaking of the owner that he presents the goods or moveable property at trial if so required.

(10) Where a photograph was taken in the absence of the accused or a copy of the photograph was not signed by the accused, then the person who took the photograph shall make a statement certifying that the photograph was taken in the absence of the accused, or that a copy of the photograph was not signed by the accused and the reason therefor.

(11) Where a photograph is presented for evidence at trial under subsection 10, the Court, before admitting the photograph shall consider the reason submitted under subsection 10 and shall be satisfied that the admission of the photograph would not cause any injustice to the accused.

### **12C. Use of samples as evidence**

(1) A sample—

(a) of a controlled drug as defined by the Misuse of Drugs Act, Cap. 283; or

(b) of any other substance which has been seized by a police officer for the purposes of a criminal investigation;

shall, subject to section 12D, be admitted as evidence in a criminal trial if the requirements of this section have been complied with in relation to the sample.

(2) The authorised analyst shall document a description of the bulk of a controlled substance including its weight and size and document any other information relevant for use in a criminal trial before a sample of the bulk is taken in accordance with this section.

(3) The authorised analyst shall, in the presence of the accused where it is possible for the accused to be present and an Inspector or a *Gazetted* Officer—

(a) take the sample from the bulk of the controlled drug or other substance of which it is a part and weigh the sample and the bulk of the controlled drug from which the sample was taken;

**“12A. Definitions**

For the purposes of sections 12C, 12D and 12E, “authorised analyst” means a person appointed by the Minister responsible for Police by notice in the *Gazette* to analyse any substance for the purposes of these sections.

**12B. Use of photographs as evidence**

(1) Every photograph of a scene or of anything seized by the police for the purposes of a criminal investigation may be admitted for use as evidence in a criminal trial.

(2) Subject to subsection (10), a photograph of goods or moveable property shall not be admitted in evidence unless—

(a) the photograph was taken in the presence of the accused; or

(b) a copy of the photograph is signed by the accused acknowledging that the photograph is a true likeness of the article photographed.

(3) A copy of any photograph which is taken pursuant to subsection (2) shall be served on the accused or his attorney-at-law personally within 28 days of its being taken and the accused or his attorney-at-law or agent may, not later than 15 days after the receipt of the copy of the photograph, object by notice in writing to the photograph being used as evidence.

(4) An objection under subsection (3) shall be made to the Commissioner of Police if the matter is to be tried summarily and to the Director of Public Prosecutions if the matter is to be tried on indictment and in any case the objection shall be dealt with by the Magistrate or Judge respectively at the trial.

(5) Where a photograph is offered as evidence in a criminal trial, the production of negatives shall not be required.

(6) Where goods or moveable property have been seized by the Police for the purposes of a criminal investigation they may not be retained for use as evidence once photographs have been taken and no objection has been made under subsection (3) and shall be returned to their respective owners forthwith.

(7) With regard to goods or moveable property the number of photographs as appears necessary to be taken for use as evidence in a criminal trial shall be taken in accordance with the instructions of the Commissioner of Police or the Director of Public Prosecutions as the case may be.

(8) Notwithstanding subsection (6) goods may be retained—

**THE EVIDENCE (AMENDMENT) ACT, 2009**

**ARRANGEMENT**

**Sections**

1. Short title.
2. Interpretation
3. Insertion of sections 12A, 12B, 12C, 12D and 12E
4. Insertion of the Second Schedule

[L.S.]



I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

4th November, 2009.

**ANTIGUA AND BARBUDA**

**THE EVIDENCE (AMENDMENT) ACT, 2009**

**No. 8 of 2009**

**AN ACT** to amend the Evidence Act, Cap. 155 and for incidental and connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Evidence (Amendment) Act, 2009.

**2. Interpretation**

In this Act “the principal Act” means the Evidence Act, Cap. 155.

**3. Insertion of sections 12A, 12B, 12C, 12D and 12E**

The principal Act is amended by inserting the following after section 12—

Passed by the House of Representatives on the 15th day of September, 2009.

Passed by the Senate on the 23rd day of September, 2009.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**T. Thomas,**  
*Clerk to the House of Representatives.*

**T. Thomas,**  
*Clerk to the Senate.*

**4. Insertion of the Second Schedule**

The principal Act is amended by inserting the following after the Schedule—

**“SECOND SCHEDULE**

*(Section 12C)*

**CERTIFICATE OF SAMPLING OF**

**SEIZED SUBSTANCE**

I HEREBY CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ , I took a sample of \_\_\_\_\_ from the bulk and that the bulk was weighed, and the sample was taken and weighed, in the presence of \_\_\_\_\_

(Print Name of Inspector / *Gazetted* Officer)

Weight of bulk \_\_\_\_\_ gms/kgs.

Weight of sample \_\_\_\_\_ gms/kgs.

Name \_\_\_\_\_

and

Rank \_\_\_\_\_

Signature \_\_\_\_\_

Authorised Analyst

Date \_\_\_\_\_

The above sampling was done, and this Certificate was signed, before me:

Name \_\_\_\_\_

Signature \_\_\_\_\_

Inspector / *Gazetted* Officer

Date \_\_\_\_\_”