

**Effective 5/13/2014**

**32B-5-311 Use of breathalyzers.**

- (1) As used in this section:
  - (a) "Breathalyzer" means:
    - (i) a device that uses electromechanical fuel cell sensor technology in the blood alcohol content testing process; or
    - (ii) a single-use, disposable alcohol breath tester that is cleared with the United States Food and Drug Administration as a Class 1 medical device with at least 99.8% accuracy and having a detection cut-off of 0.08 relative percent blood alcohol concentration.
  - (b) "Calibration" means the manual setting of specific levels on a breathalyzer by a person trained to reset the device to ensure as accurate results as possible.
  - (c)
    - (i) "Financial transaction card" means a card, code, or other means of access to a person's account issued to a person that allows the person to obtain, purchase, or receive goods, services, money, or anything else of value.
    - (ii) "Financial transaction card" includes:
      - (A) a credit card;
      - (B) a credit plate;
      - (C) a bank services card;
      - (D) a banking card;
      - (E) a check guarantee card;
      - (F) a debit card;
      - (G) a telephone credit card; or
      - (H) a device for access as defined in Section 7-16a-102.
- (2) If a retail licensee voluntarily installs, or sells or otherwise provides, a breathalyzer on its premises:
  - (a) the breathalyzer may not store financial transaction card data or associate breathalyzer results with financial transaction card data;
  - (b) for a breathalyzer described in Subsection (1)(a)(i):
    - (i) the breathalyzer shall collect data that can be downloaded by a third-party that performs the calibration of the breathalyzer, except that the downloaded information may not be used for any purpose other than calibration;
    - (ii) the retail licensee shall ensure that a breathalyzer installed inside of the licensed premises is calibrated by a third-party the sooner of every:
      - (A) 30 days; or
      - (B) 300 uses;
    - (iii) the owner of the breathalyzer shall annually report to the department compliance with the calibration requirements of this section for the breathalyzer; and
    - (iv) the breathalyzer may be able to be shut down remotely; and
  - (c) the retail licensee shall post in a conspicuous location by the breathalyzer:
    - (i) a notice to the user of the breathalyzer that the timing of when a breathalyzer test is taken may affect the results of the breathalyzer test; and
    - (ii) a notice that states: "The National Transportation Safety Board has found that crash risk is consistently and significantly elevated by the time an individual reaches a blood alcohol content of 0.05."
- (3) Data from a breathalyzer installed in the licensed premises of, or sold or otherwise provided by, a retail licensee may not be used for enforcement purposes.

- (4) If a retail licensee or owner of the breathalyzer violates this section, the department may require the retail licensee to remove the installed breathalyzer described in Subsection (1)(a)(i) or not sell or otherwise provide a breathalyzer described in Subsection (1)(a)(ii).

Enacted by Chapter 235, 2014 General Session