

BREATHALYZER AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This bill addresses use of breathalyzers.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ addresses installation or provision of breathalyzers.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

32B-5-311, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **32B-5-311** is enacted to read:

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



28 content testing process; or

29 (ii) a single-use, disposable alcohol breath tester that is cleared with the United States
30 Food and Drug Administration as a Class 1 medical device with at least 99.8% accuracy and
31 having a detection cut-off of 0.08 relative percent blood alcohol concentration.

32 (b) "Calibration" means the manual setting of specific levels on a breathalyzer by a
33 person trained to reset the device to ensure as accurate results as possible.

34 (c) (i) "Financial transaction card" means a card, code, or other means of access to a
35 person's account issued to a person that allows the person to obtain, purchase, or receive goods,
36 services, money, or anything else of value.

37 (ii) "Financial transaction card" includes:

38 (A) a credit card;

39 (B) a credit plate;

40 (C) a bank services card;

41 (D) a banking card;

42 (E) a check guarantee card;

43 (F) a debit card;

44 (G) a telephone credit card; or

45 (H) a device for access as defined in Section [7-16a-102](#).

46 (2) If a retail licensee voluntarily installs, or sells or otherwise provides, a breathalyzer
47 on its premises:

48 (a) the breathalyzer may not store financial transaction card data or associate
49 breathalyzer results with financial transaction card data;

50 (b) for a breathalyzer described in Subsection (1)(a)(i):

51 (i) the breathalyzer shall collect data that can be downloaded by a third-party that
52 performs the calibration of the breathalyzer, except that the downloaded information may not
53 be used for any purpose other than calibration;

54 (ii) the retail licensee shall ensure that a breathalyzer installed inside of the licensed
55 premises is calibrated by a third-party the sooner of every:

56 (A) 30 days; or

57 (B) 300 uses;

58 (iii) the owner of the breathalyzer shall annually report to the department compliance

59 with the calibration requirements of this section for the breathalyzer; and

60 (iv) the breathalyzer may be able to be shut down remotely; and

61 (c) the ~~it~~ **retail licensee shall post in a conspicuous**

61a **location by the breathalyzer:**

61b (i) ~~it~~ a notice to the user of the breathalyzer that the timing
62 of when a breathalyzer test is taken may affect the results of the breathalyzer test ~~it~~ **;** and

62a **(ii) a notice that states: "The National Transportation Safety Board has found that**
62b **crash risk is consistently and significantly elevated by the time an individual reaches a blood**
62c **alcohol content of 0.05."** ~~it~~

63 (3) Data from a breathalyzer installed in the licensed premises of, or sold or otherwise
64 provided by, a retail licensee may not be used for enforcement purposes.

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

Legislative Review Note
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Office of Legislative Research and General Counsel