

AN ACT

Bill 19-828
Act 19-612
effective
January 9,
2013

Codification
District of
Columbia
Official Code
2001 Edition

To amend the Establishment of the Office of the Chief Medical Examiner Act of 2000 to require the certification of the accuracy of breath test instruments at least once every 180 days; to amend the Department of Forensic Sciences Establishment Act of 2011 to require the certification of the accuracy of breath test instruments at least once every 180 days; to amend the Anti-Drunk Driving Act of 1982 to establish criteria for the admissibility of breath test results in criminal proceedings, establish the admissibility of records of maintenance for breath test instruments in criminal proceedings, establish requirements for the presence and testimony of the technician that administered or observed the breath test, to require written notice of the provisions governing admission of breath tests be given to a person that has been charged under this act, and to permit the introduction of chemical tests in a criminal proceedings.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012”.

Breath Test
Admissibility
in Criminal
Proceedings
Amendment
Act of 2012

Sec. 2. Section 2918b(b) of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1401 *et seq.*), as amended by section 202 of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), is amended by striking the phrase “3 months” and inserting the phrase “180 days” in its place.

Amend
§ 5-1419

Sec. 3. Section 8(a) of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.07(a)), as amended by section 201 of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), is amended by striking the phrase “3 months” and inserting the phrase “180 days” in its place.

Amend
§ 5-1501.07

Sec. 4. The Anti-Drunk Driving Act of 1982, effective September 14, 1982 (D.C. Law 4-145; D.C. Official Code § 50-2205.02 *et seq.*), as amended by section 103(e)(3) of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), is amended as follows:

(a) Section 3q is amended to read as follows:

“Sec. 3q. Admissibility of breath test results in a criminal proceeding.

Amend
§ 50-2206.52

“(a) Evidence from breath tests shall not be admitted in a criminal proceeding unless compliance with the following criteria has been shown:

“(1) The breath test instrument on which the breath test was conducted was operated by either a certified breath test operator or certified technician;

“(2) A certified breath test operator or certified technician observed the administration of the breath test and determined that no contamination by mouth alcohol occurred;

“(3) A reference standard was analyzed in conjunction with the subject analyses, and the analytical results of the reference standard agreed with the predicted value within the acceptable range set by regulation pursuant to section 8 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.07);

“(4) Duplicate breath specimens were collected from the person and the analytical results of the paired breath specimens were within the acceptable range set by regulation pursuant to section 8 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.07);

“(5) The breath test instrument analytically demonstrates the absence of ethanol before the testing of each breath specimen;

“(6) Analytical results are expressed in grams of alcohol per 210 liters of breath (g/210L); and

“(7) The instrument on which the breath test was conducted had been tested within 180 days before the breath test and had been found to be accurate.

“(b)(1) Records of maintenance, set by regulation pursuant to section 8 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.07), shall be admissible in any proceeding as evidence of the operating condition of the breath test instrument at the time of the person’s breath test.

“(2) Records of maintenance demonstrating that the instrument was in proper operating condition at the time of the person’s test shall be prima facie evidence that the instrument was functioning properly.

“(c) The inability of any person to obtain either the manufacturer’s schematics or software for a quantitative breath testing device shall not affect the admissibility of the results of a breath test pursuant to this section.”.

(b) New sections 3q-1, 3q-2, and 3q-3 are added to read as follows:

“Sec. 3q-1. Presence or testimony of person maintaining breath test instrument in a criminal proceeding.

New
§ 50-2206.52a

“(a) The record of a breath test is admissible in court as prima facie evidence of the amount of grams of alcohol per 210 liters of a person’s breath without the testimony of the persons responsible for maintaining the breath test instrument’s proper operating condition if:

“(1) The criteria in section 3q(a) have been met;

“(2) The record of a breath test is provided to the person, or his or her counsel, within 15 calendar days of arraignment or notice of appearance of counsel, whichever is later; and

“(3) There are more than 30 calendar days between the date the breath test is provided to the person, or his or her counsel, and the trial date.

“(b)(1) Notwithstanding subsection (a) of this section, a person may demand the presence of the persons responsible for maintaining the breath test instrument’s proper operating condition to provide evidence in the government’s case-in-chief by serving upon the government, in writing, his or her request for the live testimony of the persons responsible for maintaining the breath test instrument’s proper operating condition no later than 15 calendar days before trial.

“(2) A person’s failure to file a timely request pursuant to paragraph (1) of this subsection shall constitute a waiver of the person’s right to demand the presence of the persons responsible for maintaining the breath test instrument’s proper operating condition to provide evidence in the government’s case-in-chief.

“(c) For the purposes of this section, the term “record of a breath test” means the analytical results of a breath test administered on:

“(1) A breath test instrument operated by the Metropolitan Police Department that has been certified as accurate pursuant to section 8 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.07), as amended by section 201 of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957); or

“(2) A breath test instrument operated by other law enforcement agencies that has been certified as accurate by the persons designated by that agency to certify the accuracy of the instrument.

“Sec. 3q-2. Notification regarding admissibility of breath test results in a criminal proceeding.

New
§ 50-2206.52b

“Any person upon whom a breath specimen is collected shall be informed, in writing, of the provisions of sections 3q and 3q-1 at the time that person is charged.

“Sec. 3q-3. Admissibility of chemical test results for a criminal proceeding; blood or urine.

New
§ 50-2206.52c

“The results of chemical testing pertaining to blood or urine used to determine whether the person’s specimens contained alcohol or a drug or any combination thereof may be admissible as evidence in a criminal proceeding if the chemical testing was performed at a forensic laboratory, hospital, other equivalent medical facility, or at a laboratory contracted by a hospital or medical facility to perform chemical testing for specimens supplied by the hospital or equivalent medical facility.”.

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 19-260, effective April 20, 2013 (Delayed Applicability)

20 DCSTAT 837

Sec. 5. Applicability.

This act shall apply as of the effective date of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957).

Applicable
as of April 27,
2013

Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.