



House of Representatives

General Assembly

File No. 81

January Session, 2013

House Bill No. 6336

House of Representatives, March 20, 2013

The Committee on Public Safety and Security reported through REP. DARGAN of the 115th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE TIMING OF TESTS FOR BLOOD ALCOHOL LEVELS IN OPERATING UNDER THE INFLUENCE CASES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 14-227a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2013*):

4 (b) Except as provided in subsection (c) of this section, in any
5 criminal prosecution for violation of subsection (a) of this section,
6 evidence respecting the amount of alcohol or drug in the defendant's
7 blood or urine at the time of the alleged offense, as shown by a
8 chemical analysis of the defendant's breath, blood or urine shall be
9 admissible and competent provided: (1) The defendant was afforded a
10 reasonable opportunity to telephone an attorney prior to the
11 performance of the test and consented to the taking of the test upon
12 which such analysis is made; (2) a true copy of the report of the test
13 result was mailed to or personally delivered to the defendant within
14 twenty-four hours or by the end of the next regular business day, after

15 such result was known, whichever is later; (3) the test was performed
16 by or at the direction of a police officer according to methods and with
17 equipment approved by the Department of Emergency Services and
18 Public Protection and was performed in accordance with the
19 regulations adopted under subsection (d) of this section; (4) the device
20 used for such test was checked for accuracy in accordance with the
21 regulations adopted under subsection (d) of this section; (5) an
22 additional chemical test of the same type was performed at least ten
23 minutes after the initial test was performed or, if requested by the
24 police officer for reasonable cause, an additional chemical test of a
25 different type was performed to detect the presence of a drug or drugs
26 other than or in addition to alcohol, provided the results of the initial
27 test shall not be inadmissible under this subsection if reasonable efforts
28 were made to have such additional test performed in accordance with
29 the conditions set forth in this subsection and such additional test was
30 not performed or was not performed within a reasonable time, or the
31 results of such additional test are not admissible for failure to meet a
32 condition set forth in this subsection; and (6) evidence is presented that
33 the test was commenced within two hours of operation or, if the test
34 was not commenced within two hours of operation, evidence is
35 presented that demonstrates that the test results and analysis thereof
36 accurately indicate the blood alcohol content at the time of the alleged
37 offense. In any prosecution under this section it shall be a rebuttable
38 presumption that the results of such chemical analysis establish the
39 ratio of alcohol in the blood of the defendant at the time of the alleged
40 offense, except that if the results of the additional test indicate that the
41 ratio of alcohol in the blood of such defendant is ten-hundredths of one
42 per cent or less of alcohol, by weight, and is higher than the results of
43 the first test, evidence shall be presented that demonstrates that the
44 test results and the analysis thereof accurately indicate the blood
45 alcohol content at the time of the alleged offense.

46 Sec. 2. Subsection (c) of section 14-227b of the general statutes is
47 repealed and the following is substituted in lieu thereof (*Effective*
48 *October 1, 2013*):

49 (c) If the person arrested refuses to submit to such test or analysis or
50 submits to such test or analysis [, commenced within two hours of the
51 time of operation,] and the results of such test or analysis indicate that
52 such person has an elevated blood alcohol content, the police officer,
53 acting on behalf of the Commissioner of Motor Vehicles, shall
54 immediately revoke and take possession of the motor vehicle
55 operator's license or, if such person is a nonresident, suspend the
56 nonresident operating privilege of such person, for a twenty-four-hour
57 period. The police officer shall prepare a report of the incident and
58 shall mail or otherwise transmit in accordance with this subsection the
59 report and a copy of the results of any chemical test or analysis to the
60 Department of Motor Vehicles within three business days. The report
61 shall contain such information as prescribed by the Commissioner of
62 Motor Vehicles and shall be subscribed and sworn to under penalty of
63 false statement as provided in section 53a-157b by the arresting officer.
64 If the person arrested refused to submit to such test or analysis, the
65 report shall be endorsed by a third person who witnessed such refusal.
66 The report shall set forth the grounds for the officer's belief that there
67 was probable cause to arrest such person for a violation of subsection
68 (a) of section 14-227a and shall state that such person had refused to
69 submit to such test or analysis when requested by such police officer to
70 do so or that such person submitted to such test or analysis [,
71 commenced within two hours of the time of operation,] and the results
72 of such test or analysis indicated that such person had an elevated
73 blood alcohol content. The Commissioner of Motor Vehicles may
74 accept a police report under this subsection that is prepared and
75 transmitted as an electronic record, including electronic signature or
76 signatures, subject to such security procedures as the commissioner
77 may specify and in accordance with the provisions of sections 1-266 to
78 1-286, inclusive. In any hearing conducted pursuant to the provisions
79 of subsection (g) of this section, it shall not be a ground for objection to
80 the admissibility of a police report that it is an electronic record
81 prepared by electronic means.

82 Sec. 3. Subsection (g) of section 14-227b of the general statutes is
83 repealed and the following is substituted in lieu thereof (*Effective*

84 *October 1, 2013*):

85 (g) If such person contacts the department to schedule a hearing, the
86 department shall assign a date, time and place for the hearing, which
87 date shall be prior to the effective date of the suspension, except that,
88 with respect to a person whose operator's license or nonresident
89 operating privilege is suspended in accordance with subdivision (2) of
90 subsection (e) of this section, such hearing shall be scheduled not later
91 than thirty days after such person contacts the department. At the
92 request of such person or the hearing officer and upon a showing of
93 good cause, the commissioner may grant one or more continuances.
94 The hearing shall be limited to a determination of the following issues:
95 (1) Did the police officer have probable cause to arrest the person for
96 operating a motor vehicle while under the influence of intoxicating
97 liquor or any drug or both; (2) was such person placed under arrest; (3)
98 did such person refuse to submit to such test or analysis or did such
99 person submit to such test or analysis [, commenced within two hours
100 of the time of operation,] and the results of such test or analysis
101 indicated that such person had an elevated blood alcohol content; and
102 (4) was such person operating the motor vehicle. In the hearing, the
103 results of the test or analysis shall be sufficient to indicate the ratio of
104 alcohol in the blood of such person at the time of operation, [provided]
105 except that, if such test was not commenced within two hours of the
106 time of operation, evidence shall be presented that demonstrates that
107 the test results and analysis thereof accurately indicate the blood
108 alcohol content at the time of operation. The fees of any witness
109 summoned to appear at the hearing shall be the same as provided by
110 the general statutes for witnesses in criminal cases. Notwithstanding
111 the provisions of subsection (a) of section 52-143, any subpoena
112 summoning a police officer as a witness shall be served not less than
113 seventy-two hours prior to the designated time of the hearing.

114 Sec. 4. Subsection (a) of section 15-140r of the general statutes is
115 repealed and the following is substituted in lieu thereof (*Effective*
116 *October 1, 2013*):

117 (a) Except as provided in section 15-140s or subsection (d) of this
118 section, in any criminal prosecution for the violation of section 15-132a,
119 subsection (d) of section 15-133, section 15-140l or 15-140n or
120 subsection (b) of section 53-206d, evidence respecting the amount of
121 alcohol or drug in the defendant's blood or urine at the time of the
122 alleged offense, as shown by a chemical analysis of the defendant's
123 breath, blood or urine shall be admissible and competent provided: (1)
124 The defendant was afforded a reasonable opportunity to telephone an
125 attorney prior to the performance of the test and consented to the
126 taking of the test upon which such analysis is made; (2) a true copy of
127 the report of the test result was mailed to or personally delivered to the
128 defendant within twenty-four hours or by the end of the next regular
129 business day, after such result was known, whichever is later; (3) the
130 test was performed by or at the direction of a certified law enforcement
131 officer according to methods and with equipment approved by the
132 Department of Emergency Services and Public Protection, and if a
133 blood test was performed, it was performed on a blood sample taken
134 by a person licensed to practice medicine and surgery in this state, a
135 qualified laboratory technician, an emergency medical technician II or
136 a registered nurse in accordance with the regulations adopted under
137 subsection (b) of this section; (4) the device used for such test was
138 checked for accuracy in accordance with the regulations adopted
139 under subsection (b) of this section; (5) an additional chemical test of
140 the same type was performed at least ten minutes after the initial test
141 was performed or, if requested by the peace officer for reasonable
142 cause, an additional chemical test of a different type was performed to
143 detect the presence of a drug or drugs other than or in addition to
144 alcohol, except that the results of the initial test shall not be
145 inadmissible under this subsection if reasonable efforts were made to
146 have such additional test performed in accordance with the conditions
147 set forth in this subsection and such additional test was not performed
148 or was not performed within a reasonable time, or the results of such
149 additional test are not admissible for failure to meet a condition set
150 forth in this subsection; and (6) evidence is presented that the test was
151 commenced within two hours of operation of the vessel or, [expert

152 testimony establishes the reliability of a test commenced beyond two
 153 hours of operation of the vessel] if the test was not commenced within
 154 two hours of operation of the vessel, evidence is presented that
 155 demonstrates that the test results and analysis thereof accurately
 156 indicate the blood alcohol content at the time of the alleged offense. In
 157 any prosecution under this section, it shall be a rebuttable presumption
 158 that the results of such chemical analysis establish the ratio of alcohol
 159 in the blood of the defendant at the time of the alleged offense, except
 160 that if the results of the additional test indicate that the ratio of alcohol
 161 in the blood of such defendant is ten-hundredths of one per cent or less
 162 of alcohol, by weight, and is higher than the results of the first test,
 163 evidence shall be presented that demonstrates that the test results and
 164 the analysis thereof accurately indicate the blood alcohol content at the
 165 time of the alleged offense.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	14-227a(b)
Sec. 2	October 1, 2013	14-227b(c)
Sec. 3	October 1, 2013	14-227b(g)
Sec. 4	October 1, 2013	15-140r(a)

PS *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which eliminates the two hour time window for administration of a blood alcohol (BAC) test related to operating a boat or motor vehicle under the influence, results in no fiscal impact. In cases where the BAC test is administered after the two hour time window, evidence is required to establish the accuracy of the test results. The number of such cases is projected to be fewer than five per year.

The increase in the number of administrative hearings is anticipated to be fewer than five per year and will have no fiscal impact on the Department of Motor Vehicles or the Department of Emergency Services and Public Protection.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 6336****AN ACT CONCERNING THE TIMING OF TESTS FOR BLOOD ALCOHOL LEVELS IN OPERATING UNDER THE INFLUENCE CASES.****SUMMARY:**

Under current law, a blood alcohol content (BAC) test or analysis must be administered to a person within two hours of his or her operating a motor vehicle or boat for the results to be admissible in a criminal prosecution for operating a motor vehicle or boat while under the influence of drugs or alcohol or having an elevated BAC. The two-hour deadline also applies to an administrative *per se* hearing for operating a motor vehicle under the influence.

This bill allows a BAC test taken after the two-hour deadline to be admissible if evidence is presented that the results and analysis accurately indicate the BAC at the time of the alleged offense. (By law, the BAC level must be confirmed by a second test taken within 10 minutes of the first test.)

EFFECTIVE DATE: October 1, 2013

BACKGROUND***Implied Consent for Administrative Per Se Hearings***

By law, a person who drives a vehicle has implicitly consented to submit to drug or alcohol testing. The law establishes administrative license suspension procedures for drivers who refuse to submit to a test or whose test results indicate an elevated BAC (CGS § 14-227b). A 2010 law (1) authorized expert testimony for establishing BAC reliability when a test was performed after the two-hour deadline and (2) eliminated the two-hour deadline for administrative *per se* license suspension proceedings for boating violations.

COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable

Yea 23 Nay 0 (03/07/2013)