

ASSEMBLY BILL NO. 67—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public safety; revising provisions governing the admission into evidence of certain affidavits and declarations in certain criminal proceedings; specifying certain conditions under which a person is deemed not to be in actual physical control of a vehicle; revising provisions governing the administration of certain tests for the presence of alcohol, controlled substances and prohibited substances; revising provisions concerning the revocation of a license, permit or privilege to drive; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law makes it unlawful for a person to drive, operate or be in actual
2 physical control of a vehicle or vessel while under the influence of intoxicating
3 liquor or a controlled substance, or both. (NRS 484C.110, 484C.120, 488.410)
4 **Sections 9.3 and 20** of this bill define the term “under the influence” for the
5 purposes of existing law relating to driving, operating or being in actual physical
6 control of a vehicle or vessel while under the influence of intoxicating liquor or a
7 controlled substance, or both. **Section 9.5** of this bill provides that a person shall be
8 deemed not to be in actual physical control of a vehicle if: (1) the person is asleep
9 inside the vehicle; (2) the person is not in the driver’s seat of the vehicle; (3) the
10 engine of the vehicle is not running; (4) the vehicle is lawfully parked; and (5)
11 under the facts presented, it is evident that the person could not have driven the



12 vehicle to the location while under the influence of intoxicating liquor, a controlled
13 substance or a prohibited substance.

14 Existing law allows the affidavits and declarations of certain persons to be
15 admitted as evidence during a criminal proceeding to prove certain facts relating to
16 the testing of the blood, breath or urine of a defendant to determine the presence or
17 concentration of alcohol or certain other substances. In a felony trial, if the
18 defendant objects in writing to the admission of such affidavits or declarations, the
19 court must not admit the affidavit or declaration into evidence and the prosecution
20 may cause the witness to testify at trial concerning the information contained in the
21 affidavit or declaration. A defendant in a misdemeanor trial, however, must also
22 establish that: (1) there is a substantial and bona fide dispute between the
23 prosecution and the defense regarding the facts in the declaration; and (2) it is in the
24 best interests of justice that the witness who signed the affidavit or declaration be
25 cross-examined. (NRS 50.315) The Nevada Supreme Court has held that the
26 additional requirements imposed on a misdemeanor defendant under existing law
27 violate a defendant's constitutional right to confront the witnesses against him or
28 her and are therefore unconstitutional. (*City of Reno v. Howard*, 130 Nev. Adv. Op.
29 12, 318 P.3d 1063 (2014))

30 **Section 1** of this bill eliminates the constitutional defect identified by the
31 Nevada Supreme Court and provides instead that an affidavit or declaration must
32 not be admitted as evidence during a misdemeanor trial to prove certain facts
33 relating to the testing of the blood, breath or urine of a defendant to determine the
34 presence or concentration of alcohol or certain other substances if, not later than 10
35 days before the date set for trial or such shorter time before the date set for trial as
36 authorized by the court, the defendant objects in writing to the admission of the
37 affidavit or declaration. Under **section 1**, if the affidavit or declaration is not
38 admitted into evidence, the prosecution may produce the witness to provide
39 testimony at trial concerning the information contained in the affidavit or
40 declaration at trial.

41 Under existing law, a person who drives a vehicle in this State is deemed to
42 have given his or her consent to an evidentiary test of his or her blood, urine, breath
43 or other bodily substance to determine the concentration of alcohol in his or her
44 blood or breath or to determine whether a controlled substance, chemical, poison,
45 organic solvent or another prohibited substance is present. If a person who has thus
46 given his or her "implied consent" to an evidentiary test refuses to submit to the test
47 when directed to do so by a police officer who has reason to believe that the person
48 was driving a vehicle or operating a vessel while under the influence of alcohol or a
49 controlled substance, existing law authorizes the police officer to direct that
50 reasonable force be used to obtain a sample of blood from the person to be tested.
51 (NRS 484C.160) The Nevada Supreme Court has held that the consent implied by a
52 person's decision to drive in this State is not voluntary consent to an evidentiary
53 blood test and, thus, existing laws that allow a police officer to obtain a blood
54 sample from a person without a warrant and without voluntary consent are
55 unconstitutional. (*Byars v. State*, 130 Nev. Adv. Op. No. 85, 336 P.3d 939 (2014))

56 **Sections 12 and 14** of this bill eliminate the constitutional defect identified by
57 the Nevada Supreme Court and provide instead that if a person refuses to submit to
58 an evidentiary blood test at the request of a police officer: (1) the officer may apply
59 for a warrant or other court order directing the use of reasonable force to obtain the
60 blood sample; and (2) the person's driver's license must be revoked for a certain
61 period. **Section 14** further authorizes the revocation of a person's license, permit or
62 privilege to drive if an evidentiary test reveals the presence of a detectable amount
63 of a controlled substance or prohibited substance in his or her blood or urine for
64 which he or she did not have a valid prescription or hold a valid registry
65 identification card. **Sections 15 and 16** of this bill make corresponding revisions to
66 provisions of existing law which establish the procedure for effecting such a



67 revocation and provide for an administrative hearing to challenge such a
68 revocation. **Section 25** of this bill makes comparable changes to existing law
69 concerning the evidentiary tests of persons who operate or exercise actual physical
70 control over vessels on the waters of this State. **Section 5** of this bill makes
71 comparable changes to existing law concerning evidentiary tests of persons who
72 have actual physical possession of a firearm.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 50.315 is hereby amended to read as follows:
2 50.315 1. Except as otherwise provided in subsections 6 and
3 7, the affidavit or declaration of a person is admissible in evidence
4 in any criminal or administrative proceeding to prove:
5 (a) That the affiant or declarant has been certified by the
6 Director of the Department of Public Safety as being competent to
7 operate devices of a type certified by the Committee on Testing for
8 Intoxication as accurate and reliable for testing a person's breath to
9 determine the concentration of alcohol in his or her breath;
10 (b) The identity of a person from whom the affiant or declarant
11 obtained a sample of breath; and
12 (c) That the affiant or declarant tested the sample using a device
13 of a type so certified and that the device was functioning properly.
14 2. Except as otherwise provided in subsections 6 and 7, the
15 affidavit or declaration of a person who has examined a prepared
16 chemical solution or gas that has been used in calibrating, or
17 verifying the calibration of, a device for testing another's breath to
18 determine the concentration of alcohol in his or her breath is
19 admissible in evidence in any criminal or administrative proceeding
20 to prove:
21 (a) The occupation of the affiant or declarant; and
22 (b) That the solution or gas has the chemical composition
23 necessary for use in accurately calibrating, or verifying the
24 calibration of, the device.
25 3. Except as otherwise provided in subsections 6 and 7, the
26 affidavit or declaration of a person who calibrates a device for
27 testing another's breath to determine the concentration of alcohol in
28 his or her breath is admissible in evidence in any criminal or
29 administrative proceeding to prove:
30 (a) The occupation of the affiant or declarant;
31 (b) That on a specified date the affiant or declarant calibrated the
32 device at a named law enforcement agency by using the procedures
33 and equipment prescribed in the regulations of the Committee on
34 Testing for Intoxication;



1 (c) That the calibration was performed within the period
2 required by the Committee's regulations; and

3 (d) Upon completing the calibration of the device, it was
4 operating properly.

5 4. Except as otherwise provided in subsections 6 and 7, the
6 affidavit or declaration made under the penalty of perjury of a
7 person who withdraws a sample of blood from another for analysis
8 by an expert as set forth in NRS 50.320 is admissible in any
9 criminal or administrative proceeding to prove:

10 (a) The occupation of the affiant or declarant;

11 (b) The identity of the person from whom the affiant or
12 declarant withdrew the sample;

13 (c) The fact that the affiant or declarant kept the sample in his or
14 her sole custody or control and in substantially the same condition
15 as when he or she first obtained it until delivering it to another; and

16 (d) The identity of the person to whom the affiant or declarant
17 delivered it.

18 5. Except as otherwise provided in subsections 6 and 7, the
19 affidavit or declaration of a person who receives from another a
20 sample of blood or urine or other tangible evidence that is alleged to
21 contain alcohol or a controlled substance, chemical, poison, organic
22 solvent or another prohibited substance may be admitted in any
23 criminal or civil or administrative proceeding to prove:

24 (a) The occupation of the affiant or declarant;

25 (b) The fact that the affiant or declarant received a sample or
26 other evidence from another person and kept it in his or her sole
27 custody or control in substantially the same condition as when he or
28 she first received it until delivering it to another; and

29 (c) The identity of the person to whom the affiant or declarant
30 delivered it.

31 6. If, ~~at or before the time of trial,~~ *not later than 10 days*
32 *before the date set for trial or such shorter time before the date set*
33 *for trial as authorized by the court,* the defendant ~~establishes that:~~

34 ~~—(a) There is a substantial and bona fide dispute regarding the~~
35 ~~facts in the affidavit or declaration; and~~

36 ~~—(b) It is in the best interests of justice that the witness who~~
37 ~~signed the affidavit or declaration be cross-examined.~~ *objects in*
38 *writing to admitting into evidence the affidavit or declaration,*

39 ~~the court shall not admit the affidavit or declaration into~~
40 *evidence and* may order the prosecution to produce the witness and
41 may continue the trial for any time the court deems reasonably
42 necessary to receive such testimony. The time within which a trial is
43 required is extended by the time of the continuance.

44 7. During any trial in which the defendant has been accused of
45 committing a felony, the defendant may object in writing to



1 admitting into evidence an affidavit or declaration described in this
2 section. If the defendant makes such an objection, the court shall not
3 admit the affidavit or declaration into evidence and the prosecution
4 may cause the person to testify to any information contained in the
5 affidavit or declaration.

6 8. The Committee on Testing for Intoxication shall adopt
7 regulations prescribing the form of the affidavits and declarations
8 described in this section.

9 **Sec. 2.** (Deleted by amendment.)

10 **Sec. 3.** (Deleted by amendment.)

11 **Sec. 4.** (Deleted by amendment.)

12 **Sec. 5.** NRS 202.257 is hereby amended to read as follows:
13 202.257 1. It is unlawful for a person who:

14 (a) Has a concentration of alcohol of 0.10 or more in his or her
15 blood or breath; or

16 (b) Is under the influence of any controlled substance, or is
17 under the combined influence of intoxicating liquor and a controlled
18 substance, or any person who inhales, ingests, applies or otherwise
19 uses any chemical, poison or organic solvent, or any compound or
20 combination of any of these, to a degree which renders him or her
21 incapable of safely exercising actual physical control of a firearm,
22 ➔ to have in his or her actual physical possession any firearm. This
23 prohibition does not apply to the actual physical possession of a
24 firearm by a person who was within the person's personal residence
25 and had the firearm in his or her possession solely for self-defense.

26 2. Any evidentiary test to determine whether a person has
27 violated the provisions of subsection 1 must be administered in the
28 same manner as an evidentiary test that is administered pursuant to
29 NRS 484C.160 to 484C.250, inclusive, except that submission to
30 the evidentiary test is required of any person who is ~~directed~~
31 *requested* by a police officer to submit to the test. If a person to be
32 tested fails to submit to a required test as ~~directed~~ *requested* by a
33 police officer, the officer may ~~direct~~ *apply for a warrant or court*
34 *order directing* that reasonable force be used to the extent necessary
35 to obtain the samples of blood from the person to be tested, if the
36 officer has reasonable cause to believe that the person to be tested
37 was in violation of this section.

38 3. Any person who violates the provisions of subsection 1 is
39 guilty of a misdemeanor.

40 4. A firearm is subject to forfeiture pursuant to NRS 179.1156
41 to 179.119, inclusive, only if, during the violation of subsection 1,
42 the firearm is brandished, aimed or otherwise handled by the person
43 in a manner which endangered others.

44 5. As used in this section, the phrase "concentration of alcohol
45 of 0.10 or more in his or her blood or breath" means 0.10 gram or



1 more of alcohol per 100 milliliters of the blood of a person or per
2 210 liters of his or her breath.

3 **Sec. 6.** (Deleted by amendment.)

4 **Sec. 7.** (Deleted by amendment.)

5 **Sec. 8.** (Deleted by amendment.)

6 **Sec. 9.** Chapter 484C of NRS is hereby amended by adding
7 thereto the provisions set forth as sections 9.3 and 9.5 of this act.

8 **Sec. 9.3.** *“Under the influence” means impaired to a degree*
9 *that renders a person incapable of safely driving or exercising*
10 *actual physical control of a vehicle.*

11 **Sec. 9.5.** *For the purposes of this chapter, a person shall be*
12 *deemed not to be in actual physical control of a vehicle if:*

13 1. *The person is asleep inside the vehicle;*

14 2. *The person is not in the driver’s seat of the vehicle;*

15 3. *The engine of the vehicle is not running;*

16 4. *The vehicle is lawfully parked; and*

17 5. *Under the facts presented, it is evident that the person*
18 *could not have driven the vehicle to the location while under the*
19 *influence of intoxicating liquor, a controlled substance or a*
20 *prohibited substance.*

21 **Sec. 10.** NRS 484C.010 is hereby amended to read as follows:

22 484C.010 As used in this chapter, unless the context otherwise
23 requires, the words and terms defined in NRS 484C.020 to
24 484C.100, inclusive, *and section 9.3 of this act* have the meanings
25 ascribed to them in those sections.

26 **Sec. 11.** NRS 484C.150 is hereby amended to read as follows:

27 484C.150 1. Any person who drives or is in actual physical
28 control of a vehicle on a highway or on premises to which the public
29 has access shall be deemed to have given his or her consent to a
30 preliminary test of his or her breath to determine the concentration
31 of alcohol in his or her breath when the test is administered at the
32 ~~direction~~ *request* of a police officer at the scene of a vehicle
33 accident or collision or where the police officer stops a vehicle, if
34 the officer has reasonable grounds to believe that the person to be
35 tested was:

36 (a) Driving or in actual physical control of a vehicle while under
37 the influence of intoxicating liquor or a controlled substance; or

38 (b) Engaging in any other conduct prohibited by NRS 484C.110,
39 484C.120, 484C.130 or 484C.430.

40 2. If the person fails to submit to the test, the officer shall
41 ~~seize~~ :

42 (a) *Seize* the license or permit of the person to drive as provided
43 in NRS 484C.220 ; and



1 ***(b) If reasonable grounds otherwise exist,*** arrest the person and
2 take him or her to a convenient place for the administration of a
3 reasonably available evidentiary test under NRS 484C.160.

4 3. The result of the preliminary test must not be used in any
5 criminal action, except to show there were reasonable grounds to
6 make an arrest.

7 **Sec. 12.** NRS 484C.160 is hereby amended to read as follows:

8 484C.160 1. Except as otherwise provided in subsections ~~3~~
9 ~~and 4,~~ ***4 and 5,*** any person who drives or is in actual physical
10 control of a vehicle on a highway or on premises to which the public
11 has access shall be deemed to have given his or her consent to an
12 evidentiary test of his or her blood, urine, breath or other bodily
13 substance to determine the concentration of alcohol in his or her
14 blood or breath or to determine whether a controlled substance,
15 chemical, poison, organic solvent or another prohibited substance is
16 present, if such a test is administered at the ~~direction~~ ***request*** of a
17 police officer having reasonable grounds to believe that the person
18 to be tested was:

19 (a) Driving or in actual physical control of a vehicle while under
20 the influence of intoxicating liquor or a controlled substance ~~or~~
21 ***with a prohibited substance in his or her blood or urine; or***

22 (b) Engaging in any other conduct prohibited by NRS 484C.110,
23 484C.120, 484C.130 or 484C.430.

24 2. ***A police officer who requests that a person submit to a test***
25 ***pursuant to subsection 1 shall inform the person that his or her***
26 ***license, permit or privilege to drive will be revoked if he or she***
27 ***fails to submit to the test.***

28 3. If the person to be tested pursuant to subsection 1 is dead or
29 unconscious, the officer shall direct that samples of blood from the
30 person be tested.

31 ~~3~~ 4. Any person who is afflicted with hemophilia or with a
32 heart condition requiring the use of an anticoagulant as determined
33 by a physician is exempt from any blood test which may be required
34 pursuant to this section but must, when appropriate pursuant to the
35 provisions of this section, be required to submit to a breath or urine
36 test.

37 ~~4~~ 5. If the concentration of alcohol in the blood or breath of
38 the person to be tested is in issue:

39 (a) Except as otherwise provided in this section, the person may
40 refuse to submit to a blood test if means are reasonably available to
41 perform a breath test.

42 (b) The person may request a blood test, but if means are
43 reasonably available to perform a breath test when the blood test is
44 requested, and the person is subsequently convicted, the person must
45 pay for the cost of the blood test, including the fees and expenses of



1 witnesses *whose testimony* in court ~~H~~ *or an administrative hearing*
2 *is necessary because of the use of the blood test. The expenses of*
3 *such a witness may be assessed at an hourly rate of not less than:*

4 *(1) Fifty dollars for travel to and from the place of the*
5 *proceeding; and*

6 *(2) One hundred dollars for giving or waiting to give*
7 *testimony.*

8 ~~(c) A police officer may direct the person to submit to a blood~~
9 ~~test if the officer has reasonable grounds to believe that the person:~~

10 ~~— (1) Caused death or substantial bodily harm to another~~
11 ~~person as a result of driving or being in actual physical control of a~~
12 ~~vehicle while under the influence of intoxicating liquor or a~~
13 ~~controlled substance or as a result of engaging in any other conduct~~
14 ~~prohibited by NRS 484C.110, 484C.130 or 484C.430; or~~

15 ~~— (2) Has been convicted within the previous 7 years of:~~

16 ~~— (I) A violation of NRS 484C.110, 484C.120, 484C.130,~~
17 ~~484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or~~
18 ~~488.425 or a law of another jurisdiction that prohibits the same or~~
19 ~~similar conduct; or~~

20 ~~— (II) Any other offense in this State or another jurisdiction~~
21 ~~in which death or substantial bodily harm to another person resulted~~
22 ~~from conduct prohibited by a law set forth in sub-subparagraph (I).~~

23 ~~— 5. Except as otherwise provided in NRS 484C.200, not more~~
24 ~~than three samples of the person's blood or breath may be taken~~
25 ~~during the 5-hour period immediately following the time of the~~
26 ~~initial arrest.~~

27 6. If the presence of a controlled substance, chemical, poison,
28 organic solvent or another prohibited substance in the blood or urine
29 of the person is in issue, the officer may ~~direct~~ *request that*
30 the person ~~to~~ submit to a blood or urine test, or both. ~~in addition to~~
31 ~~the breath test.~~

32 ~~6. 7. Except as otherwise provided in subsections {3 and 5}, 4~~
33 ~~and 6, a police officer shall not direct request that a person to~~
34 ~~submit to a urine test.~~

35 ~~7. 8. If a person to be tested fails to submit to a required test~~
36 ~~as directed requested by a police officer pursuant to this section~~
37 ~~and the officer has reasonable grounds to believe that the person to~~
38 ~~be tested was:~~

39 (a) Driving or in actual physical control of a vehicle while under
40 the influence of intoxicating liquor or a controlled substance ~~to~~
41 *with a prohibited substance in his or her blood or urine; or*

42 (b) Engaging in any other conduct prohibited by NRS 484C.110,
43 484C.120, 484C.130 or 484C.430,

44 ~~to~~ the officer may ~~direct~~ *apply for a warrant or court order*
45 *directing* that reasonable force be used to the extent necessary to



1 obtain samples of blood from the person to be tested. ~~Not more~~
2 ~~than three such samples may be taken during the 5 hour period~~
3 ~~immediately following the time of the initial arrest. In such a~~
4 ~~circumstance, the officer is not required to provide the person with a~~
5 ~~choice of tests for determining the concentration of alcohol or~~
6 ~~presence of a controlled substance or another prohibited substance~~
7 ~~in his or her blood.~~

8 ~~8.]~~ 9. If a person who is less than 18 years of age is ~~directed]~~
9 *requested* to submit to an evidentiary test pursuant to this section,
10 the officer shall, before testing the person, make a reasonable
11 attempt to notify the parent, guardian or custodian of the person, if
12 known.

13 **Sec. 13.** NRS 484C.200 is hereby amended to read as follows:

14 484C.200 1. Except as otherwise provided in subsection 2, an
15 evidentiary test of breath to determine the concentration of alcohol
16 in a person's breath may be used to establish that concentration only
17 if two consecutive samples of the person's breath are taken and:

18 (a) The difference between the concentration of alcohol in the
19 person's breath indicated by the two samples is less than or equal
20 to 0.02;

21 (b) If the provisions of paragraph (a) do not apply, a third
22 evidentiary test of breath is administered and the difference between
23 the concentration of alcohol in the person's breath indicated by the
24 third sample and one of the first two samples is less than or equal to
25 0.02; or

26 (c) If the provisions of paragraphs (a) and (b) do not apply, a
27 fourth evidentiary test is administered. Except as otherwise provided
28 in NRS 484C.160, the fourth evidentiary test must be a blood test.

29 2. If the person fails to provide the second or third consecutive
30 sample, or to submit to the fourth evidentiary test, the results of the
31 first test may be used alone as evidence of the concentration of
32 alcohol in the person's breath. If for some other reason a second,
33 third or fourth sample is not obtained, the results of the first test may
34 be used with all other evidence presented to establish the
35 concentration.

36 3. If a person refuses or otherwise fails to provide a second or
37 third consecutive sample or submit to a fourth evidentiary test, ~~a~~
38 ~~police officer may direct that reasonable force be used to obtain a~~
39 ~~sample or conduct a test pursuant to] such refusal or failure~~
40 *constitutes a failure to submit to a required test as provided in*
41 *NRS 484C.160.*

42 **Sec. 14.** NRS 484C.210 is hereby amended to read as follows:

43 484C.210 1. *If a person fails to submit to an evidentiary test*
44 *as requested by a police officer pursuant to NRS 484C.160, the*
45 *license, permit or privilege to drive of the person must be revoked*



1 *as provided in NRS 484C.220, and the person is not eligible for a*
2 *license, permit or privilege to drive for a period of:*

3 (a) *One year; or*

4 (b) *Three years, if the license, permit or privilege to drive of*
5 *the person has been revoked during the immediately preceding 7*
6 *years for failure to submit to an evidentiary test.*

7 2. If the result of a test given under NRS 484C.150 or
8 484C.160 shows that a person had a concentration of alcohol of 0.08
9 or more in his or her blood or breath *or a detectable amount of a*
10 *controlled substance or prohibited substance in his or her blood or*
11 *urine for which he or she did not have a valid prescription, as*
12 *defined in NRS 453.128, or hold a valid registry identification*
13 *card, as defined in NRS 453A.140, at the time of the test, the*
14 *license, permit or privilege of the person to drive must be revoked as*
15 *provided in NRS 484C.220 and the person is not eligible for a*
16 *license, permit or privilege for a period of 90 days.*

17 ~~2-1~~ 3. If a revocation of a person's license, permit or privilege
18 to drive under NRS 62E.640 or 483.460 follows a revocation under
19 subsection ~~H~~ 2 which was based on the person having a
20 concentration of alcohol of 0.08 or more in his or her blood or
21 breath, the Department shall cancel the revocation under that
22 subsection and give the person credit for any period during which
23 the person was not eligible for a license, permit or privilege.

24 ~~3-1~~ 4. Periods of ineligibility for a license, permit or privilege
25 to drive which are imposed pursuant to this section must run
26 consecutively.

27 **Sec. 15.** NRS 484C.220 is hereby amended to read as follows:

28 484C.220 1. As agent for the Department, the officer who
29 *requested that a test be given pursuant to NRS 484C.150 or*
30 *484C.160 or who* obtained the result of a test given pursuant to NRS
31 484C.150 or 484C.160 shall immediately serve an order of
32 revocation of the license, permit or privilege to drive on a person
33 who *failed to submit to a test requested by the police officer*
34 *pursuant to NRS 484C.150 or 484C.160 or who* has a concentration
35 of alcohol of 0.08 or more in his or her blood or breath or has a
36 detectable amount of a *controlled substance or prohibited substance*
37 *in his or her blood or urine ~~H~~ for which he or she did not have a*
38 *valid prescription, as defined in NRS 453.128, or hold a valid*
39 *registry identification card, as defined in NRS 453A.140, if that*
40 *person is present, and shall seize the license or permit to drive of the*
41 *person. The officer shall then, unless the information is expressly*
42 *set forth in the order of revocation, advise the person of his or her*
43 *right to administrative and judicial review of the revocation pursuant*
44 *to NRS 484C.230 and, except as otherwise provided in this*
45 *subsection, that the person has a right to request a temporary license.*



1 If the person currently is driving with a temporary license that was
2 issued pursuant to this section or NRS 484C.230, the person is not
3 entitled to request an additional temporary license pursuant to this
4 section or NRS 484C.230, and the order of revocation issued by the
5 officer must revoke the temporary license that was previously
6 issued. If the person is entitled to request a temporary license, the
7 officer shall issue the person a temporary license on a form
8 approved by the Department if the person requests one, which is
9 effective for only 7 days including the date of issuance. The officer
10 shall immediately transmit the person's license or permit to the
11 Department along with the written certificate required by
12 subsection 2.

13 2. When a police officer has served an order of revocation of a
14 driver's license, permit or privilege on a person pursuant to
15 subsection 1, or later receives the result of an evidentiary test which
16 indicates that a person, not then present, had a concentration of
17 alcohol of 0.08 or more in his or her blood or breath or had a
18 detectable amount of a *controlled substance or* prohibited substance
19 in his or her blood or urine ~~†~~ *for which he or she did not have a*
20 *valid prescription, as defined in NRS 453.128, or hold a valid*
21 *registry identification card, as defined in NRS 453A.140,* the
22 officer shall immediately prepare and transmit to the Department,
23 together with the seized license or permit and a copy of the result of
24 the test, *if any,* a written certificate that the officer had reasonable
25 grounds to believe that the person had been driving or in actual
26 physical control of a vehicle ~~with~~ :

27 (a) *With* a concentration of alcohol of 0.08 or more in his or her
28 blood or breath or with a detectable amount of a *controlled*
29 *substance or* prohibited substance in his or her blood or urine ~~†~~ *for*
30 *which he or she did not have a valid prescription, as defined in*
31 *NRS 453.128, or hold a valid registry identification card, as*
32 *defined in NRS 453A.140,* as determined by a chemical test ~~†~~ ; or

33 (b) *While under the influence of intoxicating liquor or a*
34 *controlled substance or with a prohibited substance in his or her*
35 *blood or urine and the person refused to submit to a required*
36 *evidentiary test.*

37 ↪ The certificate must also indicate whether the officer served an
38 order of revocation on the person and whether the officer issued the
39 person a temporary license.

40 3. The Department, upon receipt of such a certificate for which
41 an order of revocation has not been served, after examining the
42 certificate and copy of the result of the chemical test, if any, and
43 finding that revocation is proper, shall issue an order revoking the
44 person's license, permit or privilege to drive by mailing the order to
45 the person at the person's last known address. The order must



1 indicate the grounds for the revocation and the period during which
2 the person is not eligible for a license, permit or privilege to drive
3 and state that the person has a right to administrative and judicial
4 review of the revocation and to have a temporary license. The order
5 of revocation becomes effective 5 days after mailing.

6 4. Notice of an order of revocation and notice of the
7 affirmation of a prior order of revocation or the cancellation of a
8 temporary license provided in NRS 484C.230 is sufficient if it is
9 mailed to the person's last known address as shown by any
10 application for a license. The date of mailing may be proved by the
11 certificate of any officer or employee of the Department, specifying
12 the time of mailing the notice. The notice is presumed to have been
13 received upon the expiration of 5 days after it is deposited, postage
14 prepaid, in the United States mail.

15 **Sec. 16.** NRS 484C.230 is hereby amended to read as follows:

16 484C.230 1. At any time while a person is not eligible for a
17 license, permit or privilege to drive following an order of revocation
18 issued pursuant to NRS 484C.220, the person may request in writing
19 a hearing by the Department to review the order of revocation, but
20 the person is only entitled to one hearing. The hearing must be
21 conducted ~~[within 15 days after receipt of the request, or]~~ as soon
22 ~~[thereafter]~~ as is practicable ~~[, in the county where the requester~~
23 ~~resides unless the parties agree otherwise.]~~ *at any location, if the*
24 *hearing officer permits each party and witness to attend the*
25 *hearing by telephone, videoconference or other electronic means.*
26 The Director or agent of the Director may issue subpoenas for the
27 attendance of witnesses and the production of relevant books and
28 papers and may require a reexamination of the requester. Unless the
29 person is ineligible for a temporary license pursuant to NRS
30 484C.220, the Department shall issue an additional temporary
31 license for a period which is sufficient to complete the
32 administrative review.

33 2. The scope of the hearing must be limited to the issue of
34 whether the person ~~[, at]~~ :

35 *(a) Failed to submit to a required test provided for in NRS*
36 *484C.150 or 484C.160; or*

37 *(b) At the time of the test, had a concentration of alcohol of 0.08*
38 *or more in his or her blood or breath or a detectable amount of a*
39 *controlled substance or prohibited substance in his or her blood or*
40 *urine [H] for which he or she did not have a valid prescription, as*
41 *defined in NRS 453.128, or hold a valid registry identification*
42 *card, as defined in NRS 453A.140.*

43 ↪ Upon an affirmative finding on ~~[this]~~ *either* issue, the
44 Department shall affirm the order of revocation. Otherwise, the
45 order of revocation must be rescinded.




1 3. If, after the hearing, the order of revocation is affirmed, the
2 person whose license, privilege or permit has been revoked is
3 entitled to a review of the same issues in district court in the same
4 manner as provided by chapter 233B of NRS. The court shall notify
5 the Department upon the issuance of a stay, and the Department
6 shall issue an additional temporary license for a period which is
7 sufficient to complete the review.

8 4. If a hearing officer grants a continuance of a hearing at the
9 request of the person whose license was revoked, or a court does so
10 after issuing a stay of the revocation, the officer or court shall notify
11 the Department, and the Department shall cancel the temporary
12 license and notify the holder by mailing the order of cancellation to
13 the person's last known address.

14 **Sec. 17.** NRS 484C.240 is hereby amended to read as follows:

15 484C.240 1. If a person refuses to submit to a required
16 chemical test provided for in NRS 484C.150 or 484C.160, evidence
17 of that refusal is admissible in any criminal or administrative action
18 arising out of acts alleged to have been committed while the person
19 was:

20 (a) Driving or in actual physical control of a vehicle while under
21 the influence of intoxicating liquor or a controlled substance  or
22 *with a prohibited substance in his or her blood or urine; or*

23 (b) Engaging in any other conduct prohibited by NRS 484C.110,
24 484C.120, 484C.130 or 484C.430.

25 2. Except as otherwise provided in subsection 3 of NRS
26 484C.150, a court or hearing officer may not exclude evidence of a
27 required test or failure to submit to such a test if the police officer or
28 other person substantially complied with the provisions of NRS
29 484C.150 to 484C.250, inclusive, and 484C.600 to 484C.640,
30 inclusive.

31 3. If a person submits to a chemical test provided for in NRS
32 484C.150 or 484C.160, full information concerning that test must be
33 made available, upon request of the person, to the person or his or
34 her attorney.

35 4. Evidence of a required test is not admissible in a criminal or
36 administrative proceeding unless it is shown by documentary or
37 other evidence that the law enforcement agency calibrated the
38 breath-testing device and otherwise maintained it as required by the
39 regulations of the Committee on Testing for Intoxication.

40 **Sec. 18.** NRS 484C.250 is hereby amended to read as follows:

41 484C.250 1. The results of any blood test administered under
42 the provisions of NRS 484C.160 or 484C.180 are not admissible in
43 any hearing or criminal action arising out of acts alleged to have
44 been committed by a person who was driving or in actual physical
45 control of a vehicle while under the influence of intoxicating liquor



1 or a controlled substance *or with a prohibited substance in his or*
2 *her blood or urine* or who was engaging in any other conduct
3 prohibited by NRS 484C.110, 484C.120, 484C.130 or 484C.430
4 unless:

5 (a) The blood tested was withdrawn by a person, other than an
6 arresting officer, who:

7 (1) Is a physician, physician assistant licensed pursuant to
8 chapter 630 or 633 of NRS, registered nurse, licensed practical
9 nurse, advanced emergency medical technician, paramedic or a
10 phlebotomist, technician, technologist or assistant employed in a
11 medical laboratory; or

12 (2) Has special knowledge, skill, experience, training and
13 education in withdrawing blood in a medically acceptable manner,
14 including, without limitation, a person qualified as an expert on that
15 subject in a court of competent jurisdiction or a person who has
16 completed a course of instruction that qualifies him or her to take an
17 examination in phlebotomy that is administered by the American
18 Medical Technologists or the American Society for Clinical
19 Pathology; and

20 (b) The test was performed on whole blood, except if the sample
21 was clotted when it was received by the laboratory, the test may be
22 performed on blood serum or plasma.

23 2. The limitation contained in paragraph (a) of subsection 1
24 does not apply to the taking of a chemical test of the urine, breath or
25 other bodily substance.

26 3. No person listed in paragraph (a) of subsection 1 incurs any
27 civil or criminal liability as a result of the administering of a blood
28 test when requested by a police officer or the person to be tested to
29 administer the test.

30 **Sec. 19.** (Deleted by amendment.)

31 **Sec. 20.** NRS 488.035 is hereby amended to read as follows:

32 488.035 As used in this chapter, unless the context otherwise
33 requires:

34 1. "Aquatic invasive species" means an aquatic species which
35 is exotic or not native to this State and which the Commission has
36 determined to be detrimental to aquatic life, water resources or
37 infrastructure for providing water in this State.

38 2. "Aquatic plant material" means aquatic plants or parts of
39 plants that are dependent on an aquatic environment to survive.

40 3. "Commission" means the Board of Wildlife Commissioners.

41 4. "Conveyance" means a motor vehicle, trailer or any other
42 equipment used to transport a vessel or containers or devices used to
43 haul water on a vessel that may contain or carry an aquatic invasive
44 species or aquatic plant material.



1 5. "Decontaminate" means eliminate any aquatic invasive
2 species on a vessel or conveyance in a manner specified by the
3 Commission which may include, without limitation, washing the
4 vessel or conveyance, draining the water in the vessel or
5 conveyance, drying the vessel or conveyance or chemically,
6 thermally or otherwise treating the vessel or conveyance.

7 6. "Department" means the Department of Wildlife.

8 7. "Flat wake" means the condition of the water close astern a
9 moving vessel that results in a flat wave disturbance.

10 8. "Interstate waters of this State" means waters forming the
11 boundary between the State of Nevada and an adjoining state.

12 9. "Legal owner" means a secured party under a security
13 agreement relating to a vessel or a renter or lessor of a vessel to the
14 State or any political subdivision of the State under a lease or an
15 agreement to lease and sell or to rent and purchase which grants
16 possession of the vessel to the lessee for a period of 30 consecutive
17 days or more.

18 10. "Motorboat" means any vessel propelled by machinery,
19 whether or not the machinery is the principal source of propulsion.

20 11. "Operate" means to navigate or otherwise use a motorboat
21 or a vessel.

22 12. "Owner" means:

23 (a) A person having all the incidents of ownership, including the
24 legal title of a vessel, whether or not he or she lends, rents or
25 pledges the vessel; and

26 (b) A debtor under a security agreement relating to a vessel.

27 ➤ "Owner" does not include a person defined as a "legal owner"
28 under subsection 9.

29 13. "Prohibited substance" has the meaning ascribed to it in
30 NRS 484C.080.

31 14. "Registered owner" means the person registered by the
32 Commission as the owner of a vessel.

33 15. *"Under the influence" means impaired to a degree that*
34 *renders a person incapable of safely operating or exercising actual*
35 *physical control of a vessel.*

36 16. A vessel is "under way" if it is adrift, making way or being
37 propelled, and is not aground, made fast to the shore, or tied or
38 made fast to a dock or mooring.

39 ~~H6~~ 17. "Vessel" means every description of watercraft, other
40 than a seaplane on the water, used or capable of being used as a
41 means of transportation on water.

42 ~~H7~~ 18. "Waters of this State" means any waters within the
43 territorial limits of this State.

44 **Sec. 21.** (Deleted by amendment.)

45 **Sec. 22.** (Deleted by amendment.)



1 **Sec. 23.** (Deleted by amendment.)

2 **Sec. 24.** NRS 488.450 is hereby amended to read as follows:

3 488.450 1. Any person who operates or is in actual physical
4 control of a vessel under power or sail on the waters of this State
5 shall be deemed to have given consent to a preliminary test of his or
6 her breath to determine the concentration of alcohol in his or her
7 breath when the test is administered at the ~~{direction}~~ *request* of a
8 peace officer after a vessel accident or collision or where an officer
9 stops a vessel, if the officer has reasonable grounds to believe that
10 the person to be tested was:

11 (a) Operating or in actual physical control of a vessel under
12 power or sail while under the influence of intoxicating liquor or a
13 controlled substance; or

14 (b) Engaging in any other conduct prohibited by NRS 488.410,
15 488.420 or 488.425.

16 2. If the person fails to submit to the test, the officer shall , *if*
17 *reasonable grounds otherwise exist*, arrest the person and take him
18 or her to a convenient place for the administration of a reasonably
19 available evidentiary test under NRS 488.460.

20 3. The result of the preliminary test must not be used in any
21 criminal action, except to show there were reasonable grounds to
22 make an arrest.

23 **Sec. 25.** NRS 488.460 is hereby amended to read as follows:

24 488.460 1. Except as otherwise provided in subsections 3 and
25 4, a person who operates or is in actual physical control of a vessel
26 under power or sail on the waters of this State shall be deemed to
27 have given consent to an evidentiary test of his or her blood, urine,
28 breath or other bodily substance to determine the concentration of
29 alcohol in his or her blood or breath or to determine whether a
30 controlled substance, chemical, poison, organic solvent or another
31 prohibited substance is present, if such a test is administered at the
32 ~~{direction}~~ *request* of a peace officer having reasonable grounds to
33 believe that the person to be tested was:

34 (a) Operating or in actual physical control of a vessel under
35 power or sail while under the influence of intoxicating liquor or a
36 controlled substance ~~{}~~ or *with a prohibited substance in his or her*
37 *blood or urine; or*

38 (b) Engaging in any other conduct prohibited by NRS 488.410,
39 488.420 or 488.425.

40 2. If the person to be tested pursuant to subsection 1 is dead or
41 unconscious, the officer shall direct that samples of blood from the
42 person be tested.

43 3. Any person who is afflicted with hemophilia or with a heart
44 condition requiring the use of an anticoagulant as determined by a
45 physician is exempt from any blood test which may be required



1 pursuant to this section, but must, when appropriate pursuant to the
2 provisions of this section, be required to submit to a breath or urine
3 test.

4 4. If the concentration of alcohol of the blood or breath of the
5 person to be tested is in issue:

6 (a) Except as otherwise provided in this section, the person may
7 refuse to submit to a blood test if means are reasonably available to
8 perform a breath test.

9 (b) The person may request a blood test, but if means are
10 reasonably available to perform a breath test when the blood test is
11 requested, and the person is subsequently convicted, the person must
12 pay for the cost of the blood test, including the fees and expenses of
13 witnesses *whose testimony* in court **is necessary because of the**
14 **use of the blood test. The expenses of such a witness may be**
15 **assessed at an hourly rate of not less than:**

16 (1) *Fifty dollars for travel to and from the place of the*
17 *proceeding; and*

18 (2) *One hundred dollars for giving or waiting to give*
19 *testimony.*

20 (c) ~~A peace officer may direct the person to submit to a blood~~
21 ~~test if the officer has reasonable grounds to believe that the person:~~

22 ~~— (1) Caused death or substantial bodily harm to another~~
23 ~~person as a result of operating or being in actual physical control~~
24 ~~of a vessel under power or sail while under the influence of~~
25 ~~intoxicating liquor or a controlled substance or as a result of~~
26 ~~engaging in any other conduct prohibited by NRS 488.410, 488.420~~
27 ~~or 488.425; or~~

28 ~~— (2) Has been convicted within the previous 7 years of:~~

29 ~~— (I) A violation of NRS 484C.110, 484C.120, 484C.130,~~
30 ~~484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or~~
31 ~~488.425 or a law of another jurisdiction that prohibits the same or~~
32 ~~similar conduct; or~~

33 ~~— (II) Any other offense in this State or another jurisdiction~~
34 ~~in which death or substantial bodily harm to another person resulted~~
35 ~~from conduct prohibited by a law set forth in sub-subparagraph (I).]~~
36 ***Except as otherwise provided in NRS 488.470, not more than three***
37 ***samples of the person's blood or breath may be taken during the***
38 ***5-hour period immediately following the time of the initial arrest.***

39 5. If the presence of a controlled substance, chemical, poison,
40 organic solvent or another prohibited substance in the blood or urine
41 of the person is in issue, the officer may **direct** request that the
42 person **to** submit to a blood or urine test, or both . ~~in addition to~~
43 ~~the breath test.]~~



1 6. Except as otherwise provided in subsections 3 and 5, a peace
2 officer shall not ~~direct~~ *request that* a person ~~to~~ submit to a urine
3 test.

4 7. If a person to be tested fails to submit to a required test as
5 ~~directed~~ *requested* by a peace officer pursuant to this section and
6 the officer has reasonable grounds to believe that the person to be
7 tested was:

8 (a) Operating or in actual physical control of a vessel under
9 power or sail while under the influence of intoxicating liquor or a
10 controlled substance ~~is~~ *or with a prohibited substance in his or her*
11 *blood or urine; or*

12 (b) Engaging in any other conduct prohibited by NRS 488.410,
13 488.420 or 488.425,

14 ~~the officer may direct~~ *apply for a warrant or court order*
15 *directing* that reasonable force be used to the extent necessary to
16 obtain samples of blood from the person to be tested. ~~Not more~~
17 ~~than three such samples may be taken during the 5-hour period~~
18 ~~immediately following the time of the initial arrest. In such a~~
19 ~~circumstance, the officer is not required to provide the person with~~
20 ~~a choice of tests for determining the alcoholic content or presence of~~
21 ~~a controlled substance or another prohibited substance in the~~
22 ~~person's blood.~~

23 *8. If a person who is less than 18 years of age is requested to*
24 *submit to an evidentiary test pursuant to this section, the officer*
25 *shall, before testing the person, make a reasonable attempt to*
26 *notify the parent, guardian or custodian of the person, if known.*

27 **Sec. 26.** NRS 488.470 is hereby amended to read as follows:

28 488.470 1. Except as otherwise provided in subsection 2, an
29 evidentiary test of breath to determine the concentration of alcohol
30 in a person's breath may be used to establish that concentration only
31 if two consecutive samples of the person's breath are taken and:

32 (a) The difference between the concentration of alcohol in the
33 person's breath indicated by the two samples is less than or equal
34 to 0.02;

35 (b) If the provisions of paragraph (a) do not apply, a third
36 evidentiary test of breath is administered and the difference between
37 the concentration of alcohol in the person's breath indicated by the
38 third sample and one of the first two samples is less than or equal to
39 0.02; or

40 (c) If the provisions of paragraphs (a) and (b) do not apply, a
41 fourth evidentiary test is administered. Except as otherwise provided
42 in NRS 488.460, the fourth evidentiary test must be a blood test.

43 2. If the person fails to provide the second or third consecutive
44 sample, or to submit to the fourth evidentiary test, the results of the
45 first test may be used alone as evidence of the concentration of



1 alcohol in the person's breath. If for some other reason a second,
2 third or fourth sample is not obtained, the results of the first test may
3 be used with all other evidence presented to establish the
4 concentration.

5 3. If a person refuses or otherwise fails to provide a second or
6 third consecutive sample or submit to a fourth evidentiary test, ~~the~~
7 ~~peace officer may direct that reasonable force be used to obtain a~~
8 ~~sample or conduct a test pursuant to~~ *such refusal or failure*
9 *constitutes a failure to submit to a required evidentiary test as*
10 *provided in* NRS 488.460.

11 **Sec. 27.** (Deleted by amendment.)

12 **Sec. 28.** (Deleted by amendment.)

13 **Sec. 29.** NRS 488.500 is hereby amended to read as follows:

14 488.500 1. The results of any blood test administered under
15 the provisions of NRS 488.460 or 488.490 are not admissible in any
16 criminal action arising out of acts alleged to have been committed
17 by a person who was operating or in actual physical control of a
18 vessel under power or sail while under the influence of intoxicating
19 liquor or a controlled substance or *with a prohibited substance in*
20 *his or her blood or urine or* who was engaging in any other conduct
21 prohibited by NRS 488.410, 488.420 or 488.425 unless:

22 (a) The blood tested was withdrawn by a person, other than an
23 arresting officer, who:

24 (1) Is a physician, registered nurse, licensed practical nurse,
25 advanced emergency medical technician, paramedic or a
26 phlebotomist, technician, technologist or assistant employed in a
27 medical laboratory; or

28 (2) Has special knowledge, skill, experience, training and
29 education in withdrawing blood in a medically acceptable manner,
30 including, without limitation, a person qualified as an expert on that
31 subject in a court of competent jurisdiction or a person who has
32 completed a course of instruction that qualifies him or her to take an
33 examination in phlebotomy that is administered by the American
34 Medical Technologists or the American Society for Clinical
35 Pathology; and

36 (b) The test was performed on whole blood, except if the sample
37 was clotted when it was received by the laboratory, the test may be
38 performed on blood serum or plasma.

39 2. The limitation contained in paragraph (a) of subsection 1
40 does not apply to the taking of a chemical test of the urine, breath or
41 other bodily substance.

42 3. No person listed in paragraph (a) of subsection 1 incurs any
43 civil or criminal liability as a result of the administering of a blood
44 test when requested by a peace officer or the person to be tested to
45 administer the test.



1 **Sec. 30.** (Deleted by amendment.)

2 **Sec. 31.** 1. This section and sections 2 to 30, inclusive, of
3 this act become effective upon passage and approval.

4 2. Section 1 of this act becomes effective on July 1, 2015.

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* A B 6 7 R 2 *