

ASSEMBLY BILL NO. 620—COMMITTEE ON JUDICIARY

(ON BEHALF OF DEPARTMENT OF MOTOR VEHICLES
AND PUBLIC SAFETY)

MARCH 19, 1999

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning certification of certain devices used to test intoxication of person. (BDR 43-752)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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 traffic laws; revising the provisions concerning the certification of certain devices used to test the intoxication of a person; and providing other matters properly relating thereto.

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

1 **Section 1.** NRS 484.3882 is hereby amended to read as follows:
2 484.3882 1. The committee on testing for intoxication shall ~~adopt~~
3 ~~regulations consisting of a list of those devices, described by manufacturer~~
4 ~~and type, which it certifies as] :~~

5 ***(a) In the manner set forth in subsection 2, certify a device that the***
6 ***committee determines is*** designed and manufactured to be accurate and
7 reliable for the purpose of testing a person's breath to determine the
8 percent by weight of alcohol in the person's breath ~~[The]~~ ; and

9 ***(b) Create, maintain and make available to the public, free of charge,***
10 ***a list of those devices certified by the committee, described by***
11 ***manufacturer and type.***

12 ***2. To determine whether a device is designed and manufactured to be***
13 ***accurate and reliable for the purpose of testing a person's breath to***
14 ***determine the percent by weight of alcohol in the person's breath, the***
15 committee

may:

1 (a) ~~[Certify those devices of which it approves which are on]~~ Use the
2 list of qualified products meeting the requirements for evidential breath-
3 testing devices of the National Highway Traffic Safety Administration; or

4 (b) Establish its own standards and procedures for evaluating those
5 devices and obtain evaluations of the devices from the director or his
6 agent.

7 ~~[2.]~~ 3. If such a device has been certified by the committee to be
8 accurate and reliable pursuant to ~~[subsection 1,]~~ **this section**, it is presumed
9 that, as designed and manufactured, the device is accurate and reliable for
10 the purpose of testing a person's breath to determine the percent by weight
11 of alcohol in the person's breath.

12 ~~[3.]~~ 4. This section does not preclude the admission of evidence of the
13 amount of alcohol in a person's breath where the information is obtained
14 through the use of a device other than one of a type certified by the
15 committee.

16 **Sec. 2.** NRS 488.480 is hereby amended to read as follows:

17 488.480 1. If a person refuses to submit to a required chemical test
18 provided for in NRS 488.460, evidence of that refusal is admissible in any
19 criminal action arising out of acts alleged to have been committed while
20 the person was operating or in actual physical control of a vessel under
21 power or sail while under the influence of intoxicating liquor or a
22 controlled substance.

23 2. A court may not exclude evidence of a required test or failure to
24 submit to such a test if the peace officer or other person substantially
25 complied with the provisions of NRS 488.460.

26 3. If a person submits to a chemical test provided for in NRS 488.460,
27 full information concerning that test must be made available, upon his
28 request, to him or his attorney.

29 4. Evidence of a required test is not admissible in a criminal
30 proceeding unless it is shown by documentary or other evidence that the
31 device for testing breath was certified ~~[.]~~ **pursuant to NRS 484.3882 and**
32 **was** calibrated, maintained and operated as provided by the regulations of
33 the committee on testing for intoxication adopted pursuant to NRS
34 ~~[484.3882,]~~ 484.3884, 484.3886 or 484.3888.

35 5. If the device for testing breath has been certified by the committee
36 on testing for intoxication to be accurate and reliable pursuant to
37 ~~[subsection 1 of]~~ NRS 484.3882, it is presumed that, as designed and
38 manufactured, the device is accurate and reliable for the purpose of testing
39 a person's breath to determine the percent by weight of alcohol in the
40 person's breath.

41 6. A court shall take judicial notice of the certification by the director
42 of a person to operate testing devices of one of the certified types. If a test
43 to determine the amount of alcohol in a person's breath has been

1 performed

1 with a certified type of device by a person who is certified pursuant to
2 NRS 484.3886 or 484.3888, it is presumed that the person operated the
3 device properly.

4 7. This section does not preclude the admission of evidence of a test of
5 a person's breath where the:

6 (a) Information is obtained through the use of a device other than one of
7 a type certified by the committee on testing for intoxication.

8 (b) Test has been performed by a person other than one who is certified
9 by the director.

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