

Senate Bill No. 152–Committee on Transportation

CHAPTER.....

AN ACT relating to traffic laws; revising the definition of the phrase describing the minimum content of alcohol required to be in the blood or breath of a person for the person to be considered to be operating a vehicle or vessel under the influence of intoxicating liquor; and providing other matters properly relating thereto.

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

**Section 1.** NRS 483.025 is hereby amended to read as follows:

483.025 ~~["0.02-percent]~~ **The phrase “concentration of alcohol of 0.02** or more but less than 0.10 ~~[percent by weight of alcohol]~~ in his blood ~~[" means a concentration of alcohol in the blood or breath of a person of]~~ **or breath” means** 0.02 gram or more but less than 0.10 gram ~~[by weight]~~ of alcohol per 100 milliliters of ~~[his]~~ **the blood of a person** or per 210 liters of his breath.

**Sec. 2.** NRS 483.461 is hereby amended to read as follows:

483.461 1. If the result of a test given pursuant to NRS 484.382 or 484.383 shows that a person less than 21 years of age had **a concentration of alcohol of** 0.02 ~~[percent]~~ or more but less than 0.10 ~~[percent by weight of alcohol]~~ in his blood **or breath** at the time of the test, his license, permit or privilege to drive must be suspended for a period of 90 days.

2. If a revocation or suspension of a person’s license, permit or privilege to drive for a violation of NRS 62.227, 484.379 or 484.3795 follows a suspension ordered pursuant to subsection 1, the department shall:

(a) Cancel the suspension ordered pursuant to subsection 1; and

(b) Give the person credit toward the period of revocation or suspension ordered pursuant to NRS 62.227, 484.379 or 484.3795, whichever is applicable, for any period during which the person’s license, permit or privilege to drive was suspended pursuant to subsection 1.

3. This section does not preclude:

(a) The prosecution of a person for a violation of any other provision of law; or

(b) The suspension or revocation of a person’s license, permit or privilege to drive pursuant to any other provision of law.

**Sec. 3.** NRS 483.462 is hereby amended to read as follows:

483.462 1. A peace officer who has received the result of a test given pursuant to NRS 484.382 or 484.383 which indicates that a person less than 21 years of age to whom the test was given had **a concentration of alcohol of** 0.02 or more but less than 0.10 ~~[percent by weight of alcohol]~~ in his blood **or breath** shall prepare a written certificate indicating whether the peace officer:

(a) Had reasonable grounds to believe that the person was driving under the influence of alcohol;

(b) Served an order of suspension on the person pursuant to subsection 2; and

(c) Issued the person a temporary license pursuant to subsection 2.

2. If a person less than 21 years of age to whom a test is given pursuant to NRS 484.382 or 484.383 is present when a peace officer receives the result of the test and the test indicates that the person has **a concentration of alcohol of** 0.02 or more but less than 0.10 ~~{percent by weight of alcohol}~~ in his blood ~~H~~ **or breath**, the peace officer shall:

(a) Serve an order of suspension of the license, permit or privilege;

(b) Seize any license or permit of the person;

(c) Advise the person of his right to:

(1) Administrative and judicial review of the suspension; and

(2) Have a temporary license;

(d) If the person requests a temporary license, issue the person a temporary license on a form approved by the department which becomes effective 24 hours after he receives the temporary license and expires 120 hours after it becomes effective; and

(e) Transmit to the department:

(1) Any license or permit seized pursuant to paragraph (b); and

(2) The written certificate which the peace officer is required to prepare pursuant to subsection 1.

3. If a person less than 21 years of age to whom a test is given pursuant to NRS 484.382 or 484.383 is not present when a peace officer receives the result of the test and the test indicates that the person has **a concentration of alcohol of** 0.02 or more but less than 0.10 ~~{percent by weight of alcohol}~~ in his blood ~~H~~ **or breath**, the peace officer shall transmit to the department a copy of the result of the test and the written certificate which the peace officer is required to prepare pursuant to subsection 1.

4. The department, upon receiving a copy of the result of the test and the written certificate transmitted by the peace officer pursuant to subsection 3, shall:

(a) Review the result of the test and the written certificate; and

(b) If the department determines that it is appropriate, issue an order to suspend the license, permit or privilege to drive of the person by mailing the order to the person at his last known address.

5. An order for suspension issued by the department pursuant to subsection 4 must:

(a) Explain the grounds for the suspension;

(b) Indicate the period of the suspension;

(c) Require the person to transmit to the department any license or permit held by the person; and

(d) Explain that the person has a right to administrative and judicial review of the suspension.

6. An order for suspension issued by the department pursuant to subsection 4 is presumed to have been received by the person 5 days after the order is deposited, postage prepaid, in the United States mail by the department. The date of mailing of the order may be shown by a certificate that is prepared by an officer or employee of the department specifying the date of mailing.

**Sec. 4.** NRS 483.463 is hereby amended to read as follows:

483.463 1. At any time during which the license, permit or privilege to drive is suspended pursuant to NRS 483.462, the person may request in writing a hearing by the department to review the order of suspension. A person is entitled to only one administrative hearing pursuant to this section.

2. Unless the parties agree otherwise, the hearing must be conducted within 15 days after receipt of the request or as soon thereafter as is practicable in the county in which the requester resides.

3. The director or his agent may:

(a) Issue subpoenas for:

(1) The attendance of witnesses at the hearing; and

(2) The production of relevant books and papers; and

(b) Require a re-examination of the requester.

4. The scope of the hearing must be limited to the issues of whether the person, at the time of the test:

(a) Was less than 21 years of age; and

(b) Had **a concentration of alcohol of** 0.02 ~~{percent}~~ or more but less than 0.10 ~~{percent by weight of alcohol}~~ in his blood ~~{-}~~ **or breath.**

5. The department shall issue the person a temporary license for a period that is sufficient to complete the administrative hearing.

6. Upon an affirmative finding on the issues listed in subsection 4, the department shall affirm the order of suspension. Otherwise, the order of suspension must be rescinded.

7. If the order of suspension is affirmed by the department, the person is entitled to judicial review of the issues listed in subsection 4 in the manner provided in chapter 233B of NRS.

8. The court shall notify the department upon issuing a stay. Upon receiving such notice, the department shall issue an additional temporary license for a period that is sufficient to complete the judicial review.

9. The hearing officer or the court shall notify the department if the hearing officer grants a continuance of the administrative hearing or the court grants a continuance after issuing a stay of the suspension. Upon receiving such notice, the department shall cancel any temporary license granted pursuant to this section and notify the holder by mailing an order of cancellation to the last known address of the holder.

**Sec. 5.** NRS 483.922 is hereby amended to read as follows:

483.922 1. Except as otherwise provided in NRS 484.383, a person who drives or is in actual physical control of a commercial motor vehicle within this state shall be deemed to have given consent to an evidentiary

test of his blood, urine, breath or other bodily substance for the purpose of determining the ~~{alcoholic content}~~ **concentration** of **alcohol in** his blood or breath or to detect the presence of a controlled substance in his system.

2. The tests must be administered pursuant to NRS 484.383 at the direction of a police officer who, after stopping or detaining the driver of a commercial motor vehicle, has reasonable grounds to believe that the driver was driving a commercial motor vehicle while under the influence of intoxicating liquor or a controlled substance.

**Sec. 6.** NRS 484.0135 is hereby amended to read as follows:

484.0135 The phrase ~~{“0.10 percent”}~~ **“concentration of alcohol of 0.10 or more {by weight of alcohol} in his blood {” includes a concentration of alcohol in the blood or breath of a person of} or breath” means** 0.10 gram or more ~~{by weight}~~ of alcohol ~~{:~~

~~—1. —Per} per~~ 100 milliliters of ~~{his blood; or~~

~~—2. —Per} the blood of a person or per~~ 210 liters of his breath.

**Sec. 7.** NRS 484.379 is hereby amended to read as follows:

484.379 1. It is unlawful for any person who:

(a) Is under the influence of intoxicating liquor;

(b) Has ~~{0.10 percent}~~ **a concentration of alcohol of 0.10** or more ~~{by weight of alcohol}~~ in his blood ~~{;} or breath;~~ or

(c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have **a concentration of alcohol of 0.10 {percent}** or more ~~{by weight of alcohol}~~ in his blood ~~{;} or breath,~~ to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

2. It is unlawful for any person who is an habitual user of or under the influence of any controlled substance, or is under the combined influence of intoxicating liquor and a controlled substance, or any person who inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this state is not a defense against any charge of violating this subsection.

3. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood **or breath** was tested, to cause ~~{the}~~ **him to have a concentration of alcohol of 0.10 or more** in his blood ~~{to equal or exceed 0.10 percent.}~~ **or breath.** A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

**Sec. 8.** NRS 484.37943 is hereby amended to read as follows:

484.37943 1. If a person is found guilty of a first violation, if the ~~[weight]~~ **concentration** of alcohol in the defendant's blood **or breath** at the time of the offense was 0.18 ~~[percent]~~ or more, or any second violation of NRS 484.379 within 7 years, the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4 or 5 to determine whether he is an abuser of alcohol or other drugs.

2. If a person is convicted of a first violation of NRS 484.379 and he is under 21 years of age at the time of the violation, the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4 or 5 to determine whether he is an abuser of alcohol or other drugs.

3. Except as otherwise provided in subsection 4 or 5, the evaluation of an offender pursuant to this section must be conducted at an evaluation center by:

(a) A counselor certified to make that evaluation by the bureau of alcohol and drug abuse of the rehabilitation division of the department of employment, training and rehabilitation;

(b) A physician certified to make that evaluation by the board of medical examiners; or

(c) A person who is approved to make that evaluation by the bureau of alcohol and drug abuse of the rehabilitation division of the department of employment, training and rehabilitation, who shall report to the court the results of the evaluation and make a recommendation to the court concerning the length and type of treatment required for the offender.

4. The evaluation of an offender who resides more than 30 miles from an evaluation center may be conducted outside an evaluation center by a person who has the qualifications set forth in subsection 3. The person who conducts the evaluation shall report to the court the results of the evaluation and make a recommendation to the court concerning the length and type of treatment required for the offender.

5. The evaluation of an offender who resides in another state may, upon approval of the court, be conducted in the state where the offender resides by a physician or other person who is authorized by the appropriate governmental agency in that state to conduct such an evaluation. The offender shall ensure that the results of the evaluation and the recommendation concerning the length and type of treatment for the offender are reported to the court.

6. An offender who is evaluated pursuant to this section shall pay the cost of the evaluation. An evaluation center or a person who conducts an evaluation in this state outside an evaluation center shall not charge an offender more than \$100 for the evaluation.

**Sec. 9.** NRS 484.3795 is hereby amended to read as follows:

484.3795 1. A person who:

(a) Is under the influence of intoxicating liquor

;

(b) Has **a concentration of alcohol of** 0.10 ~~[percent]~~ or more ~~[by weight of alcohol]~~ in his blood ~~[:]~~ **or breath;**

(c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have **a concentration of alcohol of** 0.10 ~~[percent]~~ or more ~~[by weight of alcohol]~~ in his blood ~~[:]~~ **or breath;**

(d) Is under the influence of a controlled substance, or under the combined influence of intoxicating liquor and a controlled substance; or

(e) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle,

and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this state, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, a person other than himself, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years and must be further punished by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. A prosecuting attorney shall not dismiss a charge of violating the provisions of subsection 1 in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial. A sentence imposed pursuant to subsection 1 may not be suspended nor may probation be granted.

3. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood **or breath** was tested, to cause ~~[the]~~ **him to have a concentration of alcohol of 0.10 or more** in his blood ~~[to equal or exceed 0.10 percent.]~~ **or breath.** A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

4. If the defendant was transporting a person who is less than 15 years of age in the motor vehicle at the time of the violation, the court shall consider that fact as an aggravating factor in determining the sentence of the defendant.

**Sec. 10.** NRS 484.382 is hereby amended to read as follows:

484.382 1. Any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his consent to a preliminary test of his breath for

the purpose of determining the ~~{alcoholic content of}~~ **concentration of alcohol in** his breath when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where he stops a vehicle, if the officer has reasonable grounds to believe that the person to be tested was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance.

2. If the person fails to submit to the test, the officer shall seize his license or permit to drive as provided in NRS 484.385 and arrest him and take him to a convenient place for the administration of a reasonably available evidentiary test under NRS 484.383.

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

**Sec. 11.** NRS 484.383 is hereby amended to read as follows:

484.383 1. Except as otherwise provided in subsections 3 and 4, any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his consent to an evidentiary test of his blood, urine, breath or other bodily substance for the purpose of determining the ~~{alcoholic content of}~~ **concentration of alcohol in** his blood or breath or the presence of a controlled substance when such a test is administered at the direction of a police officer having reasonable grounds to believe that the person to be tested was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance.

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

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

4. If the ~~{alcoholic content of}~~ **concentration of alcohol in** the blood or breath of the person to be tested is in issue:

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

(b) The person may request a blood test, but if means are reasonably available to perform a breath test when the blood test is requested, and the person is subsequently convicted, he must pay for the cost of the blood test, including the fees and expenses of witnesses in court.

(c) A police officer may direct the person to submit to a blood test as set forth in subsection 7 if the officer has reasonable grounds to believe that the person:

(1) Caused death or substantial bodily harm to another person as a result of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance; or

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

(I) A violation of NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or 488.420 or a law of another jurisdiction that prohibits the same or similar conduct; or

(II) Any other offense in this state or another jurisdiction in which death or substantial bodily harm to another person resulted from driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance.

5. If the presence of a controlled substance in the blood of the person is in issue, the officer may direct him to submit to a blood or urine test, or both, in addition to the breath test.

6. Except as otherwise provided in subsections 3 and 5, a police officer shall not direct a person to submit to a urine test.

7. If a person to be tested fails to submit to a required test as directed by a police officer pursuant to this section and the officer has reasonable grounds to believe that the person to be tested was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or a controlled substance, the officer may direct that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested. Not more than three such samples may be taken during the 5-hour period immediately following the time of the initial arrest. In such a circumstance, the officer is not required to provide the person with a choice of tests for determining the ~~{alcoholic content}~~ *concentration of alcohol* or presence of a controlled substance in his blood.

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

**Sec. 12.** NRS 484.384 is hereby amended to read as follows:

484.384 1. If the result of a test given under NRS 484.382 or 484.383 shows that a person had *a concentration of alcohol of 0.10 {percent}* or more ~~{by weight of alcohol}~~ in his blood *or breath* at the time of the test, his license, permit or privilege to drive must be revoked as provided in NRS 484.385 and he is not eligible for a license, permit or privilege for a period of 90 days.

2. If a revocation of a person's license, permit or privilege to drive under NRS 62.227 or 483.460 follows a revocation under subsection 1 which was based on his having *a concentration of alcohol of 0.10 {percent}* or more ~~{by weight of alcohol}~~ in his blood ~~{}~~ *or breath*, the department shall cancel the revocation under that subsection and give the person credit for any period during which he was not eligible for a license, permit or privilege.

3. Periods of ineligibility for a license, permit or privilege to drive which are imposed pursuant to this section must run consecutively.

**Sec. 13.** NRS 484.385 is hereby amended to read as follows:

484.385 1. As agent for the department, the officer who obtained the result of a test given pursuant to NRS 484.382 or 484.383 shall immediately serve an order of revocation of the license, permit or privilege to drive on a person who has **a concentration of alcohol of 0.10** ~~{percent}~~ or more ~~{by weight of alcohol}~~ in his blood **or breath** or has a detectable amount of a controlled substance in his system, if that person is present, and shall seize his license or permit to drive. The officer shall then advise him of his right to administrative and judicial review of the revocation and to have a temporary license, and shall issue him a temporary license on a form approved by the department if he requests one, which is effective for only 7 days including the date of issuance. The officer shall immediately transmit the person's license or permit to the department along with the written certificate required by subsection 2.

2. When a police officer has served an order of revocation of a driver's license, permit or privilege on a person pursuant to subsection 1, or later receives the result of an evidentiary test which indicates that a person, not then present, had **a concentration of alcohol of 0.10** ~~{percent}~~ or more ~~{by weight of alcohol}~~ in his blood **or breath** or had a detectable amount of a controlled substance in his system, the officer shall immediately prepare and transmit to the department, together with the seized license or permit and a copy of the result of the test, a written certificate that he had reasonable grounds to believe that the person had been driving or in actual physical control of a vehicle with **a concentration of alcohol of 0.10** ~~{percent}~~ or more ~~{by weight of alcohol}~~ in his blood **or breath** or with a detectable amount of a controlled substance in his system, as determined by a chemical test. The certificate must also indicate whether the officer served an order of revocation on the person and whether he issued the person a temporary license.

3. The department, upon receipt of such a certificate for which an order of revocation has not been served, after examining the certificate and copy of the result of the chemical test, if any, and finding that revocation is proper, shall issue an order revoking the person's license, permit or privilege to drive by mailing the order to the person at his last known address. The order must indicate the grounds for the revocation and the period during which the person is not eligible for a license, permit or privilege to drive and state that the person has a right to administrative and judicial review of the revocation and to have a temporary license. The order of revocation becomes effective 5 days after mailing.

4. Notice of an order of revocation and notice of the affirmation of a prior order of revocation or the cancellation of a temporary license provided in NRS 484.387 is sufficient if it is mailed to the person's last known address as shown by any application for a license. The date of mailing may be proved by the certificate of any officer or employee of the department, specifying the time of mailing the notice. The notice is

presumed to have been received upon the expiration of 5 days after it is deposited, postage prepaid, in the United States mail.

5. As used in this section, “controlled substance” means any of the following substances for which a valid prescription has not been issued to the consumer:

- (a) Amphetamine;
- (b) Benzoyllecgonine;
- (c) Cocaine;
- (d) Heroin;
- (e) Lysergic acid diethylamide;
- (f) Mecloqualone;
- (g) Mescaline;
- (h) Methamphetamine;
- (i) Methaqualone;
- (j) Monoacetylmorphine;
- (k) Phencyclidine;
- (l) N-ethylamphetamine;
- (m) N, N-dimethylamphetamine;
- (n) 2, 5-dimethoxyamphetamine;
- (o) 3, 4-methylenedioxyamphetamine;
- (p) 3, 4, 5-trimethoxyamphetamine;
- (q) 4-bromo-2, 5-dimethoxyamphetamine;
- (r) 4-methoxyamphetamine;
- (s) 4-methyl-2, 5-dimethoxyamphetamine;
- (t) 5-dimethoxy-alpha-methylphenethylamine; or
- (u) 5-methoxy-3, 4-methylenedioxyamphetamine,

if the substance is classified in schedule I or II pursuant to NRS 453.166 or 453.176 at the time the substance is consumed.

**Sec. 14.** NRS 484.386 is hereby amended to read as follows:

484.386 1. Except as otherwise provided in subsection 2, an evidentiary test of breath to determine the ~~{percentage}~~ **concentration** of alcohol in a person’s breath may be used to establish that ~~{percentage}~~ **concentration** only if two consecutive samples of the person’s breath are taken and:

(a) The difference between the ~~{percentage}~~ **concentration** of alcohol in the person’s breath indicated by the two samples is less than or equal to 0.02;

(b) If the provisions of paragraph (a) do not apply, a third evidentiary test of breath is administered and the difference between the ~~{percentage}~~ **concentration** of alcohol in the person’s breath indicated by the third sample and one of the first two samples is less than or equal to 0.02; or

(c) If the provisions of paragraphs (a) and (b) do not apply, a fourth evidentiary test is administered. Except as otherwise provided in NRS 484.383, the fourth evidentiary test must be a blood test.

2. If the person fails to provide the second or third consecutive sample, or to submit to the fourth evidentiary test, the results of the first test may be

used alone as evidence of the ~~{percentage}~~ **concentration** of alcohol in the person's breath. If for some other reason a second, third or fourth sample is not obtained, the results of the first test may be used with all other evidence presented to establish the ~~{percentage}~~ **concentration**.

3. If a person refuses or otherwise fails to provide a second or third consecutive sample or submit to a fourth evidentiary test, a police officer may direct that reasonable force be used to obtain a sample or conduct a test pursuant to NRS 484.383.

**Sec. 15.** NRS 484.387 is hereby amended to read as follows:

484.387 1. At any time while a person is not eligible for a license, permit or privilege to drive following an order of revocation issued pursuant to NRS 484.385, he may request in writing a hearing by the department to review the order of revocation, but he is only entitled to one hearing. The hearing must be conducted within 15 days after receipt of the request, or as soon thereafter as is practicable, in the county where the requester resides unless the parties agree otherwise. The director or his agent may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the requester. The department shall issue an additional temporary license for a period which is sufficient to complete the administrative review.

2. The scope of the hearing must be limited to the issue of whether the person, at the time of the test, had **a concentration of alcohol of 0.10 {percent}** or more ~~{by weight of alcohol}~~ in his blood **or breath** or a detectable amount of a controlled substance in his system. Upon an affirmative finding on this issue, the department shall affirm the order of revocation. Otherwise, the order of revocation must be rescinded.

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

4. If a hearing officer grants a continuance of a hearing at the request of the person whose license was revoked, or a court does so after issuing a stay of the revocation, the officer or court shall notify the department, and the department shall cancel the temporary license and notify the holder by mailing the order of cancellation to his last known address.

**Sec. 16.** NRS 484.3882 is hereby amended to read as follows:

484.3882 1. The committee on testing for intoxication shall:

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

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

2. To determine whether a device is designed and manufactured to be accurate and reliable for the purpose of testing a person's breath to determine the ~~{percent by weight}~~ **concentration** of alcohol in the person's breath, the committee may:

(a) Use the list of qualified products meeting the requirements for evidential breath-testing devices of the National Highway Traffic Safety Administration; or

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

3. If such a device has been certified by the committee to be accurate and reliable pursuant to this section, it is presumed that, as designed and manufactured, the device is accurate and reliable for the purpose of testing a person's breath to determine the ~~{percent by weight}~~ **concentration** of alcohol in the person's breath.

4. This section does not preclude the admission of evidence of the ~~{amount}~~ **concentration** of alcohol in a person's breath where the information is obtained through the use of a device other than one of a type certified by the committee.

**Sec. 17.** NRS 484.3884 is hereby amended to read as follows:

484.3884 1. The committee on testing for intoxication shall adopt regulations which:

(a) Prescribe standards and procedures for calibrating devices used for testing a person's breath to determine the ~~{percent by weight}~~ **concentration** of alcohol in the person's breath. The regulations must specify the period within which a law enforcement agency that uses such a device must calibrate it or have it calibrated by the director or his agent.

(b) Establish methods for ascertaining the competence of persons to calibrate such devices and provide for the examination and certification of those persons by the department. A certificate issued by the department may not be made effective for longer than 3 years.

(c) Prescribe the form and contents of records respecting the calibration of such devices which must be kept by a law enforcement agency and any other records respecting the maintenance or operation of those devices which it finds should be kept by such an agency.

2. The director shall issue a certificate to any person who is found competent to calibrate such a device or examine others on their competence in that calibration.

**Sec. 18.** NRS 484.3886 is hereby amended to read as follows:

484.3886 1. The committee on testing for intoxication shall adopt regulations which:

(a) Establish methods for ascertaining the competence of persons to:

(1) Operate devices for testing a person's breath to determine the ~~{percent by weight}~~ **concentration** of alcohol in the person's breath.

(2) Examine prospective operators and determine their competence

.

(b) Provide for certification of operators and examiners by the department. A certificate issued by the department may not be made effective for longer than 3 years.

A person who is certified as an examiner is presumed to be certified as an operator.

2. The director shall issue a certificate to any person who is found competent to operate such a device or examine others on their competence in that operation.

3. A court shall take judicial notice of the certification of a person to operate devices of one of the certified types. If a test to determine the ~~{amount}~~ **concentration** of alcohol in a person's breath has been performed with a certified type of device by a person who is certified pursuant to this section, it is presumed that the person operated the device properly.

4. This section does not preclude the admission of evidence of a test of a person's breath where the test has been performed by a person other than one who is certified pursuant to this section.

**Sec. 19.** NRS 484.3888 is hereby amended to read as follows:

484.3888 1. The committee on testing for intoxication may adopt regulations that require:

(a) The calibration of devices which are used to test a person's blood or urine to determine the ~~{amount}~~ **concentration** of alcohol or the presence of a controlled substance in the person's blood or urine;

(b) The certification of persons who make those calibrations;

(c) The certification of persons who operate devices for testing a person's blood or urine to determine the ~~{amount}~~ **concentration** of alcohol or presence of a controlled substance in the person's blood or urine; and

(d) The certification of persons who examine those operators.

2. The committee may adopt regulations that prescribe the essential procedures for the proper operation of the various types of devices used to test a person's blood or urine to determine the ~~{amount}~~ **concentration** of alcohol or the presence of a controlled substance in the person's blood or urine.

**Sec. 20.** NRS 484.391 is hereby amended to read as follows:

484.391 1. A person arrested for driving a vehicle while under the influence of intoxicating liquor or a controlled substance shall be permitted, upon his request and at his expense, reasonable opportunity to have a qualified person of his own choosing administer a chemical test or tests for the purpose of determining the ~~{alcoholic content}~~ **concentration** of **alcohol in** his blood **or breath** or the presence of a controlled substance in his blood.

2. The failure or inability to obtain such a test or tests by such person shall not preclude the admission of evidence relating to the refusal to submit to a test or relating to a test taken upon the request of a police officer.

3. A test obtained under the provisions of this section may not be substituted for or stand in lieu of the test required by NRS 484.383.

**Sec. 21.** NRS 484.3935 is hereby amended to read as follows:  
484.3935 If:

1. A manufacturer or technician in a laboratory prepares a chemical solution or gas to be used in calibrating a device for testing a person's breath to determine the ~~{percent by weight}~~ **concentration** of alcohol in his breath; and
  2. The technician makes an affidavit **or declaration** that the solution or gas has the chemical composition that is necessary for calibrating the device,
- it is presumed that the solution or gas has been properly prepared and is suitable for calibrating the device.

**Sec. 22.** NRS 484.394 is hereby amended to read as follows:

484.394 1. Any coroner, or other public official performing like duties, shall in all cases in which a death has occurred as a result of an accident involving a motor vehicle, whether the person killed is a driver, passenger or pedestrian, cause to be drawn from each decedent, within 8 hours of the accident, a blood sample to be analyzed for the presence and ~~{amount}~~ **concentration** of alcohol.

2. The findings of the examinations are a matter of public record and must be reported to the department by the coroner or other public official within 30 days ~~{of}~~ **after** the death.

3. Blood-alcohol analyses are acceptable only if made by laboratories licensed to perform this function.

**Sec. 23.** NRS 484.3941 is hereby amended to read as follows:

484.3941 As used in NRS 484.3941 to 484.3947, inclusive, unless the context otherwise requires, "device" means a mechanism that:

1. Tests a person's breath to determine the concentration of alcohol in his breath; and
2. If the results of the test indicate that the person has a concentration of alcohol **of 0.02 or more** in his ~~{breath that is equal to or greater than 0.02 grams of alcohol per 210 liters of}~~ breath, prevents the motor vehicle in which it is installed from starting.

**Sec. 24.** NRS 484.3947 is hereby amended to read as follows:

484.3947 1. The committee on testing for intoxication shall on or before January 1, 1990, adopt regulations which:

(a) Provide for the certification of each model of those devices, described by manufacturer and model, which it approves as designed and manufactured to be accurate and reliable to test a person's breath to determine the concentration of alcohol in the person's breath and, if the results of the test indicate that the person has a concentration of alcohol **of 0.02 or more** in his ~~{breath that is equal to or greater than 0.02 grams of alcohol per 210 liters of}~~ breath, prevent the motor vehicle in which it is installed from starting.

(b) Prescribe the form and content of records respecting the calibration of devices, which must be kept by the director or his agent, and other

records respecting the maintenance and operation of the devices which it finds should be kept by the director or his agent.

2. The committee shall establish its own standards and procedures for evaluating the models of the devices and obtain evaluations of those models from the director or his agent.

3. If a model of a device has been certified by the committee to be accurate and reliable pursuant to subsection 1, it is presumed that, as designed and manufactured, each device of that model is accurate and reliable to test a person's breath to determine the concentration of alcohol in the person's breath and, if the results of the test indicate that the person has a concentration of alcohol **of 0.02 or more** in his ~~breath that is equal to or greater than 0.02 grams of alcohol per 210 liters of~~ breath, will prevent the motor vehicle in which it is installed from starting.

**Sec. 25.** NRS 484.791 is hereby amended to read as follows:

484.791 1. Any peace officer may, without a warrant, arrest a person if the officer has reasonable cause for believing that the person has committed any of the following offenses:

- (a) Homicide by vehicle;
- (b) Driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or with **a concentration of alcohol of 0.10 [percent] or more [by weight of alcohol]** in his blood ~~;~~ **or breath;**
- (c) Driving or being in actual physical control of a vehicle while under the influence of any controlled substance, under the combined influence of intoxicating liquor and a controlled substance, or after ingesting, applying or otherwise using any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle;
- (d) Failure to stop, give information or render reasonable assistance in the event of an accident resulting in death or personal injuries, as prescribed in NRS 484.219 and 484.223;
- (e) Failure to stop or give information in the event of an accident resulting in damage to a vehicle or to other property legally upon or adjacent to a highway, as prescribed in NRS 484.221 and 484.225;
- (f) Reckless driving;
- (g) Driving a motor vehicle on a highway or on premises to which the public has access at a time when his driver's license has been canceled, revoked or suspended; or
- (h) Driving a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him pursuant to NRS 483.490.

2. Whenever any person is arrested as authorized in this section he must be taken without unnecessary delay before the proper magistrate as specified in NRS 484.803, except that in the case of either of the offenses designated in paragraphs (e) and (f) **of subsection 1** a peace officer has the same discretion as is provided in other cases in NRS 484.795.

**Sec. 26.** NRS 488.405 is hereby amended to read as follows:

488.405 As used in NRS 488.410 and 488.420, the phrase ~~“0.10 percent”~~ **“concentration of alcohol of 0.10** or more ~~[by weight of alcohol]~~ in his blood ~~“includes a concentration of alcohol in the blood or breath of a person”~~ **means** 0.10 gram or more ~~[by weight of alcohol]:~~  
~~—1.—Per] per~~ 100 milliliters of ~~[his blood; or~~  
~~—2.—Per] the blood of a person or per~~ 210 liters of his breath.

**Sec. 27.** NRS 488.407 is hereby amended to read as follows:

488.407 1. Except as otherwise provided in subsections 5 and 6, a person who operates or is in actual physical control of a vessel under power or sail on the waters of this state shall be deemed to have given his consent to an evidentiary test of his blood, urine, breath or other bodily substance for the purpose of determining the ~~[alcoholic content]~~ **concentration of alcohol in** his blood or breath or the presence of a controlled substance when such a test is administered at the direction of a peace officer having reasonable grounds to believe that the person to be tested was operating or exercising actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance.

2. If a person refuses to submit to such a test as directed by a peace officer, evidence of that refusal is admissible in any criminal action to determine whether the person was operating or exercising actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance.

3. The person to be tested must be informed that his refusal to submit to the test is admissible pursuant to subsection 2.

4. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn his consent, and any such test may be administered whether or not the person is informed that evidence of his refusal to submit to the test is admissible.

5. Any person who is afflicted with hemophilia or with a heart condition requiring the use of an anticoagulant as determined by a physician is exempt from any blood test which may be required pursuant to this section, but may be required to submit to a test of his breath or urine.

6. Except as otherwise provided in subsection 9, if the ~~[alcoholic content]~~ **concentration of alcohol in** the blood **or breath** of the person to be tested is in issue, he may refuse to submit to a blood test if means are reasonably available to perform a breath test. If the person requests a blood test and the means are reasonably available to perform a breath test, and he is subsequently convicted, he must pay for the cost of the substituted test, including the fees and expenses of witnesses in court.

7. If the presence of a controlled substance in the blood of the person is in issue, the officer may direct him to submit to a blood or urine test, or both, in addition to the breath test.

8. Except as otherwise provided in subsections 5 and 7, a peace officer shall not direct a person to submit to a urine test.

9. Except as otherwise provided in this subsection, a person who refuses to submit to a test required by this section must not be tested. If an officer has reasonable cause to believe that:

(a) The person to be tested was operating or in actual physical control of a vessel while under the influence of intoxicating liquor or a controlled substance; and

(b) The person thereby caused the death or substantial bodily harm of another,

the officer may direct that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested. Not more than three such samples may be taken during the 5-hour period immediately following the time of the initial arrest. In such a circumstance, the officer is not required to provide the person with a choice of tests for determining the ~~alcoholic content~~ **concentration of alcohol in his blood or breath** or presence of a controlled substance in his blood.

**Sec. 28.** NRS 488.410 is hereby amended to read as follows:

488.410 1. It is unlawful for any person who:

(a) Is under the influence of intoxicating liquor;

(b) Has **a concentration of alcohol of** 0.10 ~~percent~~ or more ~~by weight of alcohol~~ in his blood ~~or~~ **or breath;** or

(c) Is found by measurement within 2 hours after operating or being in actual physical control of a vessel to have **a concentration of alcohol of** 0.10 ~~percent~~ or more ~~by weight of alcohol~~ in his blood ~~or~~ **breath,**

to operate or be in actual physical control of a vessel under power or sail on the waters of this state.

2. It is unlawful for any person who:

(a) Is under the influence of any controlled substance;

(b) Is under the combined influence of intoxicating liquor and a controlled substance; or

(c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely operating or exercising actual physical control of a vessel under power or sail, to operate or exercise actual physical control of a vessel under power or sail on the waters of this state.

3. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after operating or being in actual physical control of the vessel, and before his blood was tested, to cause ~~the~~ **him to have a concentration of 0.10 or more of** alcohol in his blood ~~to equal or exceed 0.10 percent~~ **or breath.** A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

**Sec. 29.** NRS 488.420 is hereby amended to read as follows:

488.420 1. A person who:

(a) Is under the influence of intoxicating liquor;

(b) Has **a concentration of alcohol of 0.10 percent** or more ~~by weight of alcohol~~ in his blood ~~or~~ **or breath;**

(c) Is found by measurement within 2 hours after operating or being in actual physical control of a vessel under power or sail to have **a concentration of alcohol of 0.10 percent** or more ~~by weight of alcohol~~ in his blood ~~or~~ **or breath;**

(d) Is under the influence of a controlled substance, or under the combined influence of intoxicating liquor and a controlled substance; or

(e) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely operating or being in actual physical control of a vessel under power or sail, and does any act or neglects any duty imposed by law while operating or being in actual physical control of any vessel under power or sail, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, a person other than himself, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years and shall be further punished by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. A prosecuting attorney shall not dismiss a charge of violating the provisions of subsection 1 in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial. A sentence imposed pursuant to subsection 1 must not be suspended, and probation must not be granted.

3. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after operating or being in actual physical control of the vessel under power or sail, and before his blood was tested, to cause ~~the~~ **him to have a concentration of alcohol of 0.10 or more** in his blood ~~to equal or exceed 0.10 percent,~~ **or breath.** A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

4. If a person less than 15 years of age was in the vessel at the time of the defendant's violation, the court shall consider that fact as an aggravating factor in determining the sentence of the defendant.

**Sec. 30.** NRS 488.450 is hereby amended to read as follows:

488.450 1. Any person who operates or is in actual physical control of a vessel under power or sail on the waters of this state shall be deemed to have given his consent to a preliminary test of his breath to determine the ~~alcoholic content~~ **concentration of alcohol in** his breath when the test is administered at the direction of a peace officer after a vessel accident or collision or where an officer stops a vessel, if the officer has reasonable grounds to believe that the person to be tested was operating or in actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance.

2. If the person fails to submit to the test, the officer shall arrest him and take him to a convenient place for the administration of a reasonably available evidentiary test under NRS 488.460.

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

**Sec. 31.** NRS 488.460 is hereby amended to read as follows:

488.460 1. Except as otherwise provided in subsections 3 and 4, a person who operates or is in actual physical control of a vessel under power or sail on the waters of this state shall be deemed to have given his consent to an evidentiary test of his blood, urine, breath or other bodily substance for the purpose of determining the ~~alcoholic content~~ **concentration of alcohol in** his blood or breath or the presence of a controlled substance when such a test is administered at the direction of a peace officer having reasonable grounds to believe that the person to be tested was operating or in actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance.

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

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

4. If the ~~alcoholic content~~ **concentration of alcohol** of the blood or breath of the person to be tested is in issue:

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

(b) The person may request a blood test, but if means are reasonably available to perform a breath test when the blood test is requested, and the person is subsequently convicted, he must pay for the cost of the blood test, including the fees and expenses of witnesses in court.

(c) A peace officer may direct the person to submit to a blood test as set forth in subsection 7 if the officer has reasonable grounds to believe that the person:

(1) Caused death or substantial bodily harm to another person as a result of operating or being in actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance; or

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

(I) A violation of NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or 488.420 or a law of another jurisdiction that prohibits the same or similar conduct; or

(II) Any other offense in this state or another jurisdiction in which death or substantial bodily harm to another person resulted from driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance.

5. If the presence of a controlled substance in the blood of the person is in issue, the officer may direct him to submit to a blood or urine test, or both, in addition to the breath test.

6. Except as otherwise provided in subsections 3 and 5, a peace officer shall not direct a person to submit to a urine test.

7. If a person to be tested fails to submit to a required test as directed by a peace officer pursuant to this section and the officer has reasonable grounds to believe that the person to be tested was operating or in actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance, the officer may direct that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested. Not more than three such samples may be taken during the 5-hour period immediately following the time of the initial arrest. In such a circumstance, the officer is not required to provide the person with a choice of tests for determining the alcoholic content or presence of a controlled substance in his blood.

**Sec. 32.** NRS 488.470 is hereby amended to read as follows:

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

(a) The difference between the ~~{percentage}~~ **concentration** of alcohol in the person's breath indicated by the two samples is less than or equal to 0.02;

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

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

2. If the person fails to provide the second or third consecutive sample, or to submit to the fourth evidentiary test, the results of the first test may be used alone as evidence of the ~~{percentage}~~ **concentration** of alcohol in the person's breath. If for some other reason a second, third or fourth sample is not obtained, the results of the first test may be used with all other evidence presented to establish the ~~{percentage}~~ **concentration**.

3. If a person refuses or otherwise fails to provide a second or third consecutive sample or submit to a fourth evidentiary test, a peace officer may direct that reasonable force be used to obtain a sample or conduct a test pursuant to NRS 488.460.

**Sec. 33.** NRS 488.480 is hereby amended to read as follows:

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

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

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

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

5. If the device for testing breath has been certified by the committee on testing for intoxication to be accurate and reliable pursuant to NRS 484.3882, it is presumed that, as designed and manufactured, the device is accurate and reliable for the purpose of testing a person's breath to determine the ~~{percent by weight}~~ **concentration** of alcohol in the person's breath.

6. A court shall take judicial notice of the certification by the director of a person to operate testing devices of one of the certified types. If a test to determine the amount of alcohol in a person's breath has been performed with a certified type of device by a person who is certified pursuant to NRS 484.3886 or 484.3888, it is presumed that the person operated the device properly.

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

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

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

**Sec. 34.** NRS 488.490 is hereby amended to read as follows:

488.490 1. A person arrested for operating or exercising actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance must be permitted, upon his request and at his expense, reasonable opportunity to have a qualified person of his own choosing administer a chemical test for the purpose of determining the ~~{alcoholic content}~~ **concentration** of **alcohol in** his blood **or breath** or the presence of a controlled substance in his blood.

2. The failure or inability to obtain such a test does not preclude the admission of evidence relating to the refusal to submit to a test or relating to a test taken upon the request of a peace officer.

3. A test obtained under the provisions of this section may not be substituted for or stand in lieu of the test required by NRS 488.460.

**Sec. 35.** NRS 488.510 is hereby amended to read as follows:

488.510 If:

1. A manufacturer or technician in a laboratory prepares a chemical solution or gas to be used in calibrating a device for testing a person's breath to determine the ~~{percent by weight}~~ **concentration** of alcohol in his breath; and

2. The technician makes an affidavit **or declaration** that the solution or gas has the chemical composition that is necessary for calibrating the device,

it is presumed that the solution or gas has been properly prepared and is suitable for calibrating the device.

**Sec. 36.** NRS 488.520 is hereby amended to read as follows:

488.520 1. Any coroner, or other public officer performing like duties, shall in all cases in which a death has occurred as a result of an accident involving a vessel under power or sail on the waters of this state, whether the person killed is the operator of the vessel or a passenger or other person, cause to be drawn from each decedent, within 8 hours after the accident, a blood sample to be analyzed for the presence and ~~{amount}~~ **concentration** of alcohol.

2. The findings of the examinations are a matter of public record and must be reported to the commission by the coroner or other public officer within 30 days after the death.

3. Analyses of blood alcohol are acceptable only if made by laboratories licensed to perform this function.

**Sec. 37.** NRS 50.315 is hereby amended to read as follows:

50.315 1. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration of a person is admissible in evidence in any criminal or administrative proceeding to prove:

(a) That the affiant or declarant has been certified by the director of the department of motor vehicles and public safety as being competent to operate devices of a type certified by the committee on testing for

intoxication as accurate and reliable for testing a person's breath to determine the ~~amount by weight~~ **concentration** of alcohol in his breath;

(b) The identity of a person from whom the affiant or declarant obtained a sample of breath; and

(c) That the affiant or declarant tested the sample using a device of a type so certified and that the device was functioning properly.

2. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration of a person who prepared a chemical solution or gas that has been used in calibrating a device for testing another's breath to determine the ~~amount~~ **concentration** of alcohol in his breath is admissible in evidence in any criminal or administrative proceeding to prove:

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

(b) That the solution or gas has the chemical composition necessary for accurately calibrating it.

3. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration of a person who calibrates a device for testing another's breath to determine the ~~amount~~ **concentration** of alcohol in his breath is admissible in evidence in any criminal or administrative proceeding to prove:

(a) The occupation of the affiant or declarant;

(b) That on a specified date the affiant or declarant calibrated the device at a named law enforcement agency by using the procedures and equipment prescribed in the regulations of the committee on testing for intoxication;

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

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

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

(a) The occupation of the affiant or declarant;

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

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

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

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

(a) The occupation of the affiant or declarant

;

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

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

6. If, at or before the time of the trial, the defendant establishes that:

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

(b) It is in the best interests of justice that the witness who signed the affidavit or declaration be cross-examined,

the court may order the prosecution to produce the witness and may continue the trial for any time the court deems reasonably necessary to receive such testimony. The time within which a trial is required is extended by the time of the continuance.

7. During any trial in which the defendant has been accused of committing a felony, the defendant may object in writing to admitting into evidence an affidavit or declaration described in this section. If the defendant makes such an objection, the court shall not admit the affidavit or declaration into evidence and the prosecution may cause the person to testify in court to any information contained in the affidavit or declaration.

8. The committee on testing for intoxication shall adopt regulations prescribing the form of the affidavits and declarations described in this section.

**Sec. 38.** NRS 50.320 is hereby amended to read as follows:

50.320 1. The affidavit or declaration of a chemist and any other person who has qualified in the district court of any county to testify as an expert witness regarding the presence in the breath, blood or urine of a person of alcohol, a controlled substance, or a chemical, poison or organic solvent, or the identity or quantity of a controlled substance alleged to have been in the possession of a person, which is submitted to prove:

(a) The quantity of the purported controlled substance; or

(b) The ~~amount~~ **concentration** of alcohol or the presence or absence of a controlled substance, chemical, poison or organic solvent, as the case may be,

is admissible in the manner provided in this section.

2. An affidavit or declaration which is submitted to prove any fact set forth in subsection 1 must be admitted into evidence when submitted during any administrative proceeding, preliminary hearing or hearing before a grand jury. The court shall not sustain any objection to the admission of such an affidavit or declaration.

3. The defendant may object in writing to admitting into evidence an affidavit or declaration submitted to prove any fact set forth in subsection 1 during his trial. If the defendant makes such an objection, the court shall not admit the affidavit or declaration into evidence and the prosecution may

cause the person to testify in court to any information contained in the affidavit or declaration.

4. The committee on testing for intoxication shall adopt regulations prescribing the form of the affidavits and declarations described in this section.

**Sec. 39.** NRS 202.257 is hereby amended to read as follows:

202.257 1. It is unlawful for a person who:

(a) Has *a concentration of alcohol of 0.10 or more* ~~by weight of alcohol~~ in his blood ~~or~~ *or breath*, or

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

2. Any evidentiary test to determine whether a person has violated the provisions of subsection 1 must be administered in the same manner as an evidentiary test that is administered pursuant to NRS 484.383 to 484.394, inclusive, except that submission to the evidentiary test is required of any person who is directed by a police officer to submit to the test. If a person to be tested fails to submit to a required test as directed by a police officer, the officer may direct that reasonable force be used to the extent necessary to obtain the samples of blood from the person to be tested, if the officer has reasonable cause to believe that the person to be tested was in violation of this section.

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

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

*5. As used in this section, the phrase "concentration of alcohol of 0.10 or more in his blood or breath" has the meaning ascribed to it in NRS 484.0135.*

**Sec. 40.** The amendatory provisions of this act do not apply to offenses that were committed before October 1, 1999.

**Sec. 41.** Sections 16 and 33 of this act become effective at 12:01 a.m. on October 1, 1999.

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