

SENATE BILL NO. 152—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF CLARK COUNTY)

FEBRUARY 10, 1999

Referred to Committee on Transportation

SUMMARY—Revises definition regarding minimum content of alcohol required to be in blood or breath of person to be considered operating vehicles and vessels under influence of intoxicating liquor. (BDR 43-275)

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 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:

- 1 **Section 1.** NRS 483.025 is hereby amended to read as follows:
2 483.025 ~~["0.02 percent"]~~ ***The phrase "concentration of alcohol of 0.02***
3 or more but less than 0.10 ~~["percent by weight of alcohol"]~~ in his blood ~~["~~
4 ~~means a concentration of alcohol in the blood or breath of a person of"]~~ ***or***
5 ***breath" means*** 0.02 gram or more but less than 0.10 gram ~~["by weight"]~~ of
6 alcohol per 100 milliliters of ~~["his"]~~ ***the blood of a person*** or per 210 liters of
7 his breath.
8 **Sec. 2.** NRS 483.461 is hereby amended to read as follows:
9 483.461 1. If the result of a test given pursuant to NRS 484.382 or
10 484.383 shows that a person less than 21 years of age had ***a concentration***
11 ***of alcohol of*** 0.02 ~~["percent"]~~ or more but less than 0.10 ~~["percent by weight~~
12 ~~of alcohol"]~~ in his blood ***or breath*** at the time of the test, his license, permit
13 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

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

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

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

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

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

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

19 (a) Explain the grounds for the suspension;

20 (b) Indicate the period of the suspension;

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

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

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

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

32 483.463 1. At any time during which the license, permit or privilege
33 to drive is suspended pursuant to NRS 483.462, the person may request in
34 writing a hearing by the department to review the order of suspension. A
35 person is entitled to only one administrative hearing pursuant to this
36 section.

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

40 3. The director or his agent may:

41 (a) Issue subpoenas for:

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

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

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

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

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

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

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

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

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

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

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

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

25 483.922 1. Except as otherwise provided in NRS 484.383, a person
26 who drives or is in actual physical control of a commercial motor vehicle
27 within this state shall be deemed to have given consent to an evidentiary
28 test of his blood, urine, breath or other bodily substance for the purpose of
29 determining the ~~{alcoholic content}~~ **concentration** of **alcohol in** his blood
30 or breath or to detect the presence of a controlled substance in his system.

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

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

37 484.0135 The phrase ~~{“0.10 percent”}~~ **“concentration of alcohol of**
38 **0.10** or more ~~{by weight of alcohol}~~ in his blood ~~{“includes a concentration~~
39 ~~of alcohol in the blood or breath of a person of}~~ **or breath” means** 0.10
40 gram or more ~~{by weight}~~ of alcohol ~~{~~

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

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

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

2 484.379 1. It is unlawful for any person who:

3 (a) Is under the influence of intoxicating liquor;

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

6 (c) Is found by measurement within 2 hours after driving or being in
7 actual physical control of a vehicle to have **a concentration of alcohol of**
8 0.10 ~~{percent}~~ or more ~~{by-weight-of-alcohol}~~ in his blood ~~{;} or breath,~~
9 to drive or be in actual physical control of a vehicle on a highway or on
10 premises to which the public has access.

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

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

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

33 484.37943 1. If a person is found guilty of a first violation, if the
34 ~~{weight}~~ **concentration** of alcohol in the defendant's blood **or breath** at the
35 time of the offense was 0.18 ~~{percent}~~ or more, or any second violation of
36 NRS 484.379 within 7 years, the court shall, before sentencing the
37 offender, require an evaluation of the offender pursuant to subsection 3, 4
38 or 5 to determine whether he is an abuser of alcohol or other drugs.

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

drugs.

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

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

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

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

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

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

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

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

33 484.3795 1. A person who:

34 (a) Is under the influence of intoxicating liquor;

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

37 (c) Is found by measurement within 2 hours after driving or being in
38 actual physical control of a vehicle to have *a concentration of alcohol of*
39 0.10 ~~{percent}~~ or more ~~{by weight of alcohol}~~ in his blood ~~{;}~~ *or breath;*

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

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

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

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

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

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

37 484.382 1. Any person who drives or is in actual physical control of
38 a vehicle on a highway or on premises to which the public has access shall
39 be deemed to have given his consent to a preliminary test of his breath for
40 the purpose of determining the ~~alcoholic content of~~ **concentration of**
41 **alcohol in** his breath when the test is administered at the direction of a
42 police officer at the scene of a vehicle accident or collision or where he

1 stops a vehicle, if the officer has reasonable grounds to believe that the
2 person to be tested was driving or in actual physical control of a vehicle
3 while under the influence of intoxicating liquor or a controlled substance.

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

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

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

11 484.383 1. Except as otherwise provided in subsections 3 and 4, any
12 person who drives or is in actual physical control of a vehicle on a highway
13 or on premises to which the public has access shall be deemed to have
14 given his consent to an evidentiary test of his blood, urine, breath or other
15 bodily substance for the purpose of determining the ~~alcoholic content of~~
16 **concentration of alcohol in** his blood or breath or the presence of a
17 controlled substance when such a test is administered at the direction of a
18 police officer having reasonable grounds to believe that the person to be
19 tested was driving or in actual physical control of a vehicle while under the
20 influence of intoxicating liquor or a controlled substance.

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

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

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

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

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

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

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

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

2 (I) A violation of NRS 484.379, 484.3795, subsection 2 of NRS
3 488.400, NRS 488.410 or 488.420 or a law of another jurisdiction that
4 prohibits the same or similar conduct; or

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

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

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

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

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

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

32 484.384 1. If the result of a test given under NRS 484.382 or
33 484.383 shows that a person had *a concentration of alcohol of* 0.10
34 ~~{percent}~~ or more ~~{by weight of alcohol}~~ in his blood *or breath* at the time
35 of the test, his license, permit or privilege to drive must be revoked as
36 provided in NRS 484.385 and he is not eligible for a license, permit or
37 privilege for a period of 90 days.

38 2. If a revocation of a person's license, permit or privilege to drive
39 under NRS 62.227 or 483.460 follows a revocation under subsection 1
40 which was based on his having *a concentration of alcohol of* 0.10
41 ~~{percent}~~ or more ~~{by weight of alcohol}~~ in his blood ~~{}~~ *or breath*, the

1 department shall cancel the revocation under that subsection and give the
2 person credit for any period during which he was not eligible for a license,
3 permit or privilege.

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

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

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

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

35 3. The department, upon receipt of such a certificate for which an order
36 of revocation has not been served, after examining the certificate and copy
37 of the result of the chemical test, if any, and finding that revocation is
38 proper, shall issue an order revoking the person's license, permit or
39 privilege to drive by mailing the order to the person at his last known
40 address. The order must indicate the grounds for the revocation and the
41 period during which the person is not eligible for a license, permit or

1 privilege to drive and state that the person has a right to administrative and
2 judicial review of the revocation and to have a temporary license. The order
3 of revocation becomes effective 5 days after mailing.

4 4. Notice of an order of revocation and notice of the affirmation of a
5 prior order of revocation or the cancellation of a temporary license
6 provided in NRS 484.387 is sufficient if it is mailed to the person's last
7 known address as shown by any application for a license. The date of
8 mailing may be proved by the certificate of any officer or employee of the
9 department, specifying the time of mailing the notice. The notice is
10 presumed to have been received upon the expiration of 5 days after it is
11 deposited, postage prepaid, in the United States mail.

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

- 15 (a) Amphetamine;
- 16 (b) Benzoyllecgonine;
- 17 (c) Cocaine;
- 18 (d) Heroin;
- 19 (e) Lysergic acid diethylamide;
- 20 (f) Mecloqualone;
- 21 (g) Mescaline;
- 22 (h) Methamphetamine;
- 23 (i) Methaqualone;
- 24 (j) Monoacetylmorphine;
- 25 (k) Phencyclidine;
- 26 (l) N-ethylamphetamine;
- 27 (m) N, N-dimethylamphetamine;
- 28 (n) 2, 5-dimethoxyamphetamine;
- 29 (o) 3, 4-methylenedioxyamphetamine;
- 30 (p) 3, 4, 5-trimethoxyamphetamine;
- 31 (q) 4-bromo-2, 5-dimethoxyamphetamine;
- 32 (r) 4-methoxyamphetamine;
- 33 (s) 4-methyl-2, 5-dimethoxyamphetamine;
- 34 (t) 5-dimethoxy-alpha-methylphenethylamine; or
- 35 (u) 5-methoxy-3, 4-methylenedioxyamphetamine,

36 if the substance is classified in schedule I or II pursuant to NRS 453.166 or
37 453.176 at the time the substance is consumed.

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

39 484.386 1. Except as otherwise provided in subsection 2, an
40 evidentiary test of breath to determine the ~~{percentage}~~ **concentration** of
41 alcohol in a person's breath may be used to establish that ~~{percentage}~~
42 **concentration** only if two consecutive samples of the person's breath are
43 taken

and:

1 (a) The difference between the ~~{percentage}~~ **concentration** of alcohol in
2 the person's breath indicated by the two samples is less than or equal to
3 0.02;

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

8 (c) If the provisions of paragraphs (a) and (b) do not apply, a fourth
9 evidentiary test is administered. Except as otherwise provided in NRS
10 484.383, the fourth evidentiary test must be a blood test.

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

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

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

22 484.387 1. At any time while a person is not eligible for a license,
23 permit or privilege to drive following an order of revocation issued
24 pursuant to NRS 484.385, he may request in writing a hearing by the
25 department to review the order of revocation, but he is only entitled to one
26 hearing. The hearing must be conducted within 15 days after receipt of the
27 request, or as soon thereafter as is practicable, in the county where the
28 requester resides unless the parties agree otherwise. The director or his
29 agent may issue subpoenas for the attendance of witnesses and the
30 production of relevant books and papers and may require a reexamination
31 of the requester. The department shall issue an additional temporary license
32 for a period which is sufficient to complete the administrative review.

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

39 3. If, after the hearing, the order of revocation is affirmed, the person
40 whose license, privilege or permit has been revoked is entitled to a review
41 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.

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

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

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

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

13 484.3886 1. The committee on testing for intoxication shall adopt
14 regulations which:

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

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

18 (2) Examine prospective operators and determine their competence.

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

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

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

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

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

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

36 484.3888 1. The committee on testing for intoxication may adopt
37 regulations that require:

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

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

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

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

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

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

11 484.391 1. A person arrested for driving a vehicle while under the
12 influence of intoxicating liquor or a controlled substance shall be permitted,
13 upon his request and at his expense, reasonable opportunity to have a
14 qualified person of his own choosing administer a chemical test or tests for
15 the purpose of determining the ~~{alcoholic content}~~ **concentration** of
16 **alcohol in** his blood **or breath** or the presence of a controlled substance in
17 his blood.

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

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

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

25 484.3935 If:

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

30 2. The technician makes an affidavit **or declaration** that the solution or
31 gas has the chemical composition that is necessary for calibrating the
32 device,
33 it is presumed that the solution or gas has been properly prepared and is
34 suitable for calibrating the device.

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

36 484.394 1. Any coroner, or other public official performing like
37 duties, shall in all cases in which a death has occurred as a result of an
38 accident involving a motor vehicle, whether the person killed is a driver,
39 passenger or pedestrian, cause to be drawn from each decedent, within 8
40 hours of the accident, a blood sample to be analyzed for the presence and

41 ~~{amount}~~ **concentration** of alcohol.

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

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

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

7 484.3941 As used in NRS 484.3941 to 484.3947, inclusive, unless the
8 context otherwise requires, “device” means a mechanism that:

9 1. Tests a person’s breath to determine the concentration of alcohol in
10 his breath; and

11 2. If the results of the test indicate that the person has a concentration
12 of alcohol of 0.02 or more in his ~~breath that is equal to or greater than~~
13 ~~0.02 grams of alcohol per 210 liters of~~ breath, prevents the motor vehicle
14 in which it is installed from starting.

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

16 484.3947 1. The committee on testing for intoxication shall on or
17 before January 1, 1990, adopt regulations which:

18 (a) Provide for the certification of each model of those devices,
19 described by manufacturer and model, which it approves as designed and
20 manufactured to be accurate and reliable to test a person’s breath to
21 determine the concentration of alcohol in the person’s breath and, if the
22 results of the test indicate that the person has a concentration of alcohol of
23 0.02 or more in his ~~breath that is equal to or greater than 0.02 grams of~~
24 ~~alcohol per 210 liters of~~ breath, prevent the motor vehicle in which it is
25 installed from starting.

26 (b) Prescribe the form and content of records respecting the calibration
27 of devices, which must be kept by the director or his agent, and other
28 records respecting the maintenance and operation of the devices which it
29 finds should be kept by the director or his agent.

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

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

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

2 484.791 1. Any peace officer may, without a warrant, arrest a person
3 if the officer has reasonable cause for believing that the person has
4 committed any of the following offenses:

5 (a) Homicide by vehicle;

6 (b) Driving or being in actual physical control of a vehicle while under
7 the influence of intoxicating liquor or with **a concentration of alcohol of**
8 0.10 ~~percent~~ or more ~~by weight of alcohol~~ in his blood ~~or~~ **or breath;**

9 (c) Driving or being in actual physical control of a vehicle while under
10 the influence of any controlled substance, under the combined influence of
11 intoxicating liquor and a controlled substance, or after ingesting, applying
12 or otherwise using any chemical, poison or organic solvent, or any
13 compound or combination of any of these, to a degree which renders the
14 person incapable of safely driving or exercising actual physical control of a
15 vehicle;

16 (d) Failure to stop, give information or render reasonable assistance in
17 the event of an accident resulting in death or personal injuries, as
18 prescribed in NRS 484.219 and 484.223;

19 (e) Failure to stop or give information in the event of an accident
20 resulting in damage to a vehicle or to other property legally upon or
21 adjacent to a highway, as prescribed in NRS 484.221 and 484.225;

22 (f) Reckless driving;

23 (g) Driving a motor vehicle on a highway or on premises to which the
24 public has access at a time when his driver's license has been canceled,
25 revoked or suspended; or

26 (h) Driving a motor vehicle in any manner in violation of the restrictions
27 imposed in a restricted license issued to him pursuant to NRS 483.490.

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

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

34 488.405 As used in NRS 488.410 and 488.420, the phrase ~~["0.10~~
35 ~~percent]~~ **"concentration of alcohol of 0.10** or more ~~by weight of alcohol]~~
36 in his blood ~~["includes a concentration of alcohol in the blood or breath of~~
37 ~~a person]~~ **or breath" means** 0.10 gram or more ~~by weight of alcohol:~~
38 ~~—1.—Per] per~~ 100 milliliters of ~~this blood; or~~
39 ~~—2.—Per] the blood of a person or per~~ 210 liters of his breath.

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

41 488.407 1. Except as otherwise provided in subsections 5 and 6, a
42 person who operates or is in actual physical control of a vessel under power
43 or sail on the waters of this state shall be deemed to have given his consent

1 to an evidentiary test of his blood, urine, breath or other bodily substance
2 for the purpose of determining the ~~alcoholic content~~ **concentration** of
3 **alcohol in** his blood or breath or the presence of a controlled substance
4 when such a test is administered at the direction of a peace officer having
5 reasonable grounds to believe that the person to be tested was operating or
6 exercising actual physical control of a vessel under power or sail while
7 under the influence of intoxicating liquor or a controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

9 488.410 1. It is unlawful for any person who:

10 (a) Is under the influence of intoxicating liquor;

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

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

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

19 2. It is unlawful for any person who:

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

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

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

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

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

40 488.420 1. A person who:

41 (a) Is under the influence of intoxicating liquor;

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

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

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

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

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

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

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

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

2 488.450 1. Any person who operates or is in actual physical control
3 of a vessel under power or sail on the waters of this state shall be deemed to
4 have given his consent to a preliminary test of his breath to determine the
5 ~~alcoholic content~~ **concentration** of **alcohol in** his breath when the test is
6 administered at the direction of a peace officer after a vessel accident or
7 collision or where an officer stops a vessel, if the officer has reasonable
8 grounds to believe that the person to be tested was operating or in actual
9 physical control of a vessel under power or sail while under the influence of
10 intoxicating liquor or a controlled substance.

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

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

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

17 488.460 1. Except as otherwise provided in subsections 3 and 4, a
18 person who operates or is in actual physical control of a vessel under power
19 or sail on the waters of this state shall be deemed to have given his consent
20 to an evidentiary test of his blood, urine, breath or other bodily substance
21 for the purpose of determining the ~~alcoholic content~~ **concentration** of
22 **alcohol in** his blood or breath or the presence of a controlled substance
23 when such a test is administered at the direction of a peace officer having
24 reasonable grounds to believe that the person to be tested was operating or
25 in actual physical control of a vessel under power or sail while under the
26 influence of intoxicating liquor or a controlled substance.

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

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

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

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

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

1 other person, cause to be drawn from each decedent, within 8 hours after
2 the accident, a blood sample to be analyzed for the presence and ~~{amount}~~
3 **concentration** of alcohol.

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

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

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

10 50.315 1. Except as otherwise provided in subsections 6 and 7, the
11 affidavit or declaration of a person is admissible in evidence in any
12 criminal or administrative proceeding to prove:

13 (a) That the affiant or declarant has been certified by the director of the
14 department of motor vehicles and public safety as being competent to
15 operate devices of a type certified by the committee on testing for
16 intoxication as accurate and reliable for testing a person's breath to
17 determine the ~~{amount by weight}~~ **concentration** of alcohol in his breath;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) It is in the best interests of justice that the witness who signed the
29 affidavit or declaration be cross-examined,
30 the court may order the prosecution to produce the witness and may
31 continue the trial for any time the court deems reasonably necessary to
32 receive such testimony. The time within which a trial is required is
33 extended by the time of the continuance.

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

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

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

2 50.320 1. The affidavit or declaration of a chemist and any other
3 person who has qualified in the district court of any county to testify as an
4 expert witness regarding the presence in the breath, blood or urine of a
5 person of alcohol, a controlled substance, or a chemical, poison or organic
6 solvent, or the identity or quantity of a controlled substance alleged to have
7 been in the possession of a person, which is submitted to prove:

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

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

12 is admissible in the manner provided in this section.

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

18 3. The defendant may object in writing to admitting into evidence an
19 affidavit or declaration submitted to prove any fact set forth in subsection 1
20 during his trial. If the defendant makes such an objection, the court shall
21 not admit the affidavit or declaration into evidence and the prosecution may
22 cause the person to testify in court to any information contained in the
23 affidavit or declaration.

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

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

28 202.257 1. It is unlawful for a person who:

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

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

41 2. Any evidentiary test to determine whether a person has violated the
42 provisions of subsection 1 must be administered in the same manner as an
43 evidentiary test that is administered pursuant to NRS 484.383 to 484.3947,

1 inclusive, except that submission to the evidentiary test is required of any
2 person who is directed by a police officer to submit to the test. If a person
3 to be tested fails to submit to a required test as directed by a police officer,
4 the officer may direct that reasonable force be used to the extent necessary
5 to obtain the samples of blood from the person to be tested, if the officer
6 has reasonable cause to believe that the person to be tested was in violation
7 of this section.

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

10 4. A firearm is subject to forfeiture pursuant to NRS 179.1156 to
11 179.119, inclusive, only if, during the violation of subsection 1, the firearm
12 is brandished, aimed or otherwise handled by the person in a manner which
13 endangered others.

14 5. *As used in this section, the phrase “concentration of alcohol of*
15 *0.10 or more in his blood or breath” has the meaning ascribed to it in*
16 *NRS 484.0135.*

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

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