

SENATE BILL NO. 189—COMMITTEE ON JUDICIARY

(ON BEHALF OF ATTORNEY GENERAL)

FEBRUARY 15, 1999

Referred to Committee on Judiciary

SUMMARY—Provides that public records concerning certain procedures are not inadmissible under hearsay rule. (BDR 4-464)

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 ~~for omitted material~~ is material to be omitted.

AN ACT relating to evidence; providing that a public record concerning a procedure which is routinely conducted by or at the request of a public official or agency and that produces objective results is not inadmissible under the hearsay rule; 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 50.315 is hereby amended to read as follows:
2 50.315 1. Except as otherwise provided in subsections 6 and 7, the
3 affidavit or declaration of a person is admissible in evidence in any
4 criminal or administrative proceeding to prove:
5 (a) That the affiant or declarant has been certified by the director of the
6 department of motor vehicles and public safety as being competent to
7 operate devices of a type certified by the committee on testing for
8 intoxication as accurate and reliable for testing a person's breath to
9 determine the amount by weight of alcohol in his breath;
10 (b) The identity of a person from whom the affiant or declarant obtained
11 a sample of breath; and
12 (c) That the affiant or declarant tested the sample using a device of a
13 type so certified and that the device was functioning properly.
14 2. Except as otherwise provided in subsections 6 and 7, the affidavit or
15 declaration of a person who prepared a chemical solution or gas that has

1 been used in calibrating a device for testing another's breath to determine
2 the amount of alcohol in his breath is admissible in evidence in any
3 criminal or administrative proceeding to prove:

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

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

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

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

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

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

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

19 4. Except as otherwise provided in subsections 6 and 7, the affidavit or
20 declaration made under the penalty of perjury of a person who withdraws a
21 sample of blood from another for analysis by an expert as set forth in NRS
22 50.320 is admissible in any criminal or administrative proceeding to prove:

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

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

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

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

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

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

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

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

1 6. ~~[[If,]~~ ***Except as otherwise provided in subsection 9, if,*** at or before
2 the time of the trial, the defendant establishes that:

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

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

11 7. ~~[[During]~~ ***Except as otherwise provided in subsection 9, during*** any
12 trial in which the defendant has been accused of committing a felony, the
13 defendant may object in writing to admitting into evidence an affidavit or
14 declaration described in this section. If the defendant makes such an
15 objection, the court shall not admit the affidavit or declaration into
16 evidence and the prosecution may cause the person to testify in court to any
17 information contained in the affidavit or declaration.

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

21 9. ***The provisions of subsections 6 and 7 do not apply to an affidavit***
22 ***or declaration that is admitted pursuant to NRS 51.155.***

23 **Sec. 2.** NRS 50.320 is hereby amended to read as follows:

24 50.320 1. The affidavit or declaration of a chemist and any other
25 person who has qualified in the district court of any county to testify as an
26 expert witness regarding the presence in the breath, blood or urine of a
27 person of alcohol, a controlled substance, or a chemical, poison or organic
28 solvent, or the identity or quantity of a controlled substance alleged to have
29 been in the possession of a person, which is submitted to prove:

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

31 (b) The amount of alcohol or the presence or absence of a controlled
32 substance, chemical, poison or organic solvent, as the case may be,
33 is admissible in the manner provided in this section.

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

39 3. ~~[[The]~~ ***Except as otherwise provided in this subsection, the***
40 defendant may object in writing to admitting into evidence an affidavit or
41 declaration submitted to prove any fact set forth in subsection 1 during his
42 trial. If the defendant makes such an objection, the court shall not admit the
43 affidavit or declaration into evidence and the prosecution may cause the

1 person to testify in court to any information contained in the affidavit or
2 declaration. ***The provisions of this subsection do not apply to an affidavit
3 or declaration that is admitted pursuant to NRS 51.155.***

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

7 **Sec. 3.** NRS 50.325 is hereby amended to read as follows:

8 50.325 1. If a person is charged with an offense punishable pursuant
9 to chapter 453, 484 or 488 of NRS or homicide resulting from driving,
10 operating or being in actual physical control of a vehicle or a vessel under
11 power or sail while under the influence of intoxicating liquor, a controlled
12 substance or a chemical, poison or organic solvent, and it is necessary to
13 prove:

14 (a) The existence of any alcohol;

15 (b) The quantity of a controlled substance; or

16 (c) The existence or identity of a controlled substance, chemical, poison
17 or organic solvent,

18 the prosecuting attorney may request that the affidavit or declaration of an
19 expert or other person described in NRS 50.315 and 50.320 be admitted
20 into evidence at the trial or preliminary hearing concerning the offense.
21 Except as otherwise provided in NRS 50.315 and 50.320, the affidavit or
22 declaration must be admitted into evidence.

23 2. If the request is to have the affidavit or declaration admitted into
24 evidence at a preliminary hearing or hearing before a grand jury, the
25 affidavit or declaration must be admitted into evidence upon submission.

26 ~~If~~

27 **3. *Except as otherwise provided in this subsection, if*** the request is to
28 have the affidavit or declaration admitted into evidence at trial, the request
29 must be:

30 (a) Made at least 10 days before the date set for the trial;

31 (b) Sent to the defendant's counsel and to the defendant, by registered or
32 certified mail by the prosecuting attorney; and

33 (c) Accompanied by a copy of the affidavit or declaration and the name,
34 address and telephone number of the affiant or declarant.

35 ~~{3.}~~

36 ***The provisions of this subsection do not apply to an affidavit or
37 declaration that is admitted pursuant to NRS 51.155.***

38 4. The provisions of this section do not prohibit either party from
39 producing any witness to offer testimony at trial.

40 **Sec. 4.** NRS 51.155 is hereby amended to read as follows:

41 51.155 1. Records, reports, statements or data compilations, in any
42 form, of public officials or agencies are not inadmissible under the hearsay
43 rule if they set forth:

1 ~~{1.}~~ (a) The activities of the official or agency;
2 ~~{2.}~~ (b) Matters observed pursuant to duty imposed by law; or
3 ~~{3.}~~ (c) In civil cases and against the state in criminal cases, factual
4 findings resulting from an investigation made pursuant to authority granted
5 by law,
6 unless the sources of information or the method or circumstances of the
7 investigation indicate lack of trustworthiness.
8 **2. Records, reports, statements or data compilations, in any form,**
9 **that are created by or at the request of a public official or agency are not**
10 **inadmissible under the hearsay rule if they are related to a procedure**
11 **that is routinely conducted by or at the request of the public official or**
12 **agency and that produces objective results, including, without limitation,**
13 **records, reports, statements or data compilations related to the**
14 **calibration of a device used to test the breath of a person to determine the**
15 **amount of alcohol in his breath.**
16 **Sec. 5.** The amendatory provisions of this act do not apply to offenses
17 committed before October 1, 1999.

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