

CHAPTER.....

AN ACT relating to driving under the influence of alcohol or a controlled substance; reducing the concentration of alcohol that may be present in the blood or breath of a person while operating a vehicle or vessel; providing for the prospective expiration of such reduced concentration of alcohol upon the repeal of certain federal laws; 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 483.045 is hereby amended to read as follows:

483.045 The phrase “concentration of alcohol of 0.02 or more but less than ~~[0.10]~~ **0.08** in his blood or breath” means 0.02 gram or more but less than ~~[0.10]~~ **0.08** gram of alcohol per 100 milliliters of 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 or more but less than ~~[0.10]~~ **0.08** 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]~~ **0.08** 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}~~ **0.08** in his blood 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}~~ **0.08** in his blood 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 reexamination 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 or more but less than ~~0.10~~ 0.08 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 484.038 is hereby amended to read as follows:

484.038 The phrase "concentration of alcohol of ~~0.10~~ 0.08 or more in his blood or breath" means ~~0.10~~ 0.08 gram or more of alcohol per 100 milliliters of the blood of a person or per 210 liters of his breath.

Sec. 6. 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 a concentration of alcohol of ~~0.10~~ 0.08 or more 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~~ 0.08 or more 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:

- (a) Is under the influence of a 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 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. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50

(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Marijuana	10	2
(h) Marijuana metabolite	15	5
(i) Methamphetamine	500	100
(j) Phencyclidine	25	10

4. 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 him to have a concentration of alcohol of ~~[0.10]~~ **0.08** or more in his blood 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. 7. 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]~~ **0.08** or more 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]~~ **0.08** or more in his blood or breath;

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

(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; or

(f) Has a prohibited substance in his blood or urine in an amount that is equal to or greater than the amount set forth in subsection 3 of NRS 484.379,

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 him to have a concentration of alcohol of ~~{0.10}~~ 0.08 or more in his blood 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. 8. 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}~~ 0.08 or more 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}~~ 0.08 or more 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. 9. 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}~~ 0.08 or more in his blood or

breath or has a detectable amount of a prohibited substance in his blood or urine, 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}~~ 0.08 or more in his blood or breath or had a detectable amount of a prohibited substance in his blood or urine, 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}~~ 0.08 or more in his blood or breath or with a detectable amount of a prohibited substance in his blood or urine, 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.

Sec. 10. 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]~~ 0.08 or more in his blood or breath or a detectable amount of a prohibited substance in his blood or urine. 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. 11. NRS 488.405 is hereby amended to read as follows:

488.405 As used in NRS 488.410 and 488.420, the phrase "concentration of alcohol of ~~[0.10]~~ 0.08 or more in his blood or breath" means ~~[0.10]~~ 0.08 gram or more per 100 milliliters of the blood of a person or per 210 liters of his breath.

Sec. 12. 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]~~ 0.08 or more in his blood 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]~~ **0.08** or more 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 a 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 be in actual physical control of a vessel under power or sail on the waters of this state.

3. It is unlawful for any person to operate or be in actual physical control of a vessel under power or sail on the waters of this state with an amount of a prohibited substance in his blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Marijuana	10	2
(h) Marijuana metabolite	15	5
(i) Methamphetamine	500	100
(j) Phencyclidine	25	10

4. 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 him to have a concentration of ~~[0.10]~~ **0.08** or more of alcohol in his blood 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. 13. 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~~ 0.08 or more in his blood 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~~ 0.08 or more in his blood or breath;
- (d) Is under the influence of a controlled substance or is under the combined influence of intoxicating liquor and a controlled substance;
- (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; or
- (f) Has a prohibited substance in his blood or urine in an amount that is equal to or greater than the amount set forth in subsection 3 of NRS 488.410,

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

him to have a concentration of alcohol of ~~[0.10]~~ *0.08* or more in his blood 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. 14. 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 in his blood 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 484.3947, 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 484.038.]~~ *means 0.10 gram or more of alcohol per 100 milliliters of the blood of a person or per 210 liters of his breath.*

Sec. 15. This act becomes effective on September 23, 2003, and expires by limitation on the date of the repeal of the federal law

requiring each state to make it unlawful for a person to operate a motor vehicle with a blood alcohol concentration of 0.08 percent or greater as a condition to receiving federal funding for the construction of highways in this state.