
ASSEMBLY BILL NO. 445—COMMITTEE ON JUDICIARY
(ON BEHALF OF THE DEPARTMENT OF PUBLIC SAFETY)

MARCH 25, 2005

Referred to Committee on Transportation

SUMMARY—Transfers Committee on Testing for Intoxication from Department of Motor Vehicles to Department of Public Safety. (BDR 43-665)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ***[omitted material]*** is material to be omitted.

AN ACT relating to the administration of public agencies; transferring the Committee on Testing for Intoxication from the Department of Motor Vehicles to the Department of Public Safety; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law creates the Committee on Testing for Intoxication in the
2 Department of Motor Vehicles. (NRS 481.015, 484.388) The Committee regulates
3 devices to test for the presence of alcohol or drugs in a person’s breath, blood or
4 urine. (NRS 484.3882-484.3888)
5 This bill transfers the Committee on Testing for Intoxication from the
6 Department of Motor Vehicles to the Department of Public Safety.
-

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

- 1 **Section 1.** NRS 481.015 is hereby amended to read as follows:
2 481.015 1. Except as otherwise provided in this subsection,
3 as used in this title, unless the context otherwise requires,
4 “certificate of title” means the document issued by the Department
5 that identifies the legal owner of a vehicle and contains the
6 information required pursuant to subsection 2 of NRS 482.245. The



1 definition set forth in this subsection does not apply to chapters 488
2 and 489 of NRS.

3 2. Except as otherwise provided in chapters 480 and 486A of
4 NRS ~~[and]~~, *NRS 484.388 to 484.3888, inclusive*, NRS 486.363 to
5 486.377, inclusive, *and 488.480*, as used in this title, unless the
6 context otherwise requires:

7 (a) "Department" means the Department of Motor Vehicles.

8 (b) "Director" means the Director of the Department of Motor
9 Vehicles.

10 **Sec. 2.** NRS 484.388 is hereby amended to read as follows:

11 NRS 484.388 is hereby amended to read as follows:

12 484.388 1. There is hereby created the Committee on Testing
13 for Intoxication, consisting of five members.

14 2. The Director *of the Department of Public Safety* or his
15 delegate is the Chairman of the Committee. The remaining members
16 of the Committee are appointed by the Director and serve at his
17 pleasure. At least three of the members appointed by the Director
18 must be technically qualified in fields related to testing for
19 intoxication. Not more than three members of the Committee may
20 be from any one county.

21 3. The Committee shall meet at the call of the Director *of the*
22 *Department of Public Safety* and as frequently as the Committee
23 deems necessary. Three members of the Committee constitute a
24 quorum. If a member is unable to attend a meeting, he may be
25 represented by an alternate approved by the Director.

26 4. Any person who is aggrieved by a decision of the
27 Committee may appeal in writing to a hearing officer of the
28 Department ~~H~~ *of Public Safety*.

29 **Sec. 3.** NRS 484.3882 is hereby amended to read as follows:

30 484.3882 1. The Committee on Testing for Intoxication shall:

31 (a) In the manner set forth in subsection 2, certify a device that
32 the Committee determines is designed and manufactured to be
33 accurate and reliable for the purpose of testing a person's breath to
34 determine the concentration of alcohol in the person's breath; and

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

38 2. To determine whether a device is designed and
39 manufactured to be accurate and reliable for the purpose of testing a
40 person's breath to determine the concentration of alcohol in the
41 person's breath, the Committee may:

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



(b) Establish its own standards and procedures for evaluating those devices and obtain evaluations of the devices from the Director *of the Department of Public Safety* 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 concentration of alcohol in the person's breath.

4. This section does not preclude the admission of evidence of the 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. 4. 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 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 *of the Department of Public Safety* or his agent.

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

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

2. The Director *of the Department of Public Safety* shall issue a certificate to any person who is found competent to calibrate such a device or examine others on their competence in that calibration.

Sec. 5. NRS 484.3886 is hereby amended to read as follows:

484.3886 1. The Committee on Testing for Intoxication shall adopt regulations which:

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

(1) Operate devices for testing a person's breath to determine the concentration of alcohol in the person's breath.

(2) Examine prospective operators and determine their competence.



(b) Provide for certification of operators and examiners by the Department ~~H~~ *of Public Safety*. A certificate issued by the Department may not be made effective for longer than 3 years.

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

2. The Director *of the Department of Public Safety* shall issue a certificate to any person who is found competent to operate such a device or examine others on their competence in that operation.

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

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

Sec. 6. 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 488.450 or 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:

(a) Operating or in actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance; or

(b) Engaging in any other conduct prohibited by NRS 488.410 or 488.420.

2. Except as otherwise provided in subsection 3 of NRS 488.450, 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 488.450 to 488.500, inclusive.

3. If a person submits to a chemical test provided for in NRS 488.450 or 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



1 testing a person's breath to determine the concentration of alcohol in
2 the person's breath.

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

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

11 (a) Information is obtained through the use of a device other
12 than one of a type certified by the Committee on Testing for
13 Intoxication.

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

16 **8. As used in this section, "Director" means the Director of**
17 **the Department of Public Safety.**

18 **Sec. 7.** This act becomes effective upon passage and approval.



