

Assembly Bill No. 250—Assemblyman Manendo
(by request)

CHAPTER.....

AN ACT relating to evidence; revising certain provisions governing the admissibility of certain affidavits or declarations; authorizing personal service of a request to have such affidavits or declarations admitted into evidence at certain trials; defining certain terms; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a person is qualified as an expert in a district court in this State, the person's affidavit or declaration regarding the presence in breath, blood or urine of alcohol or certain other substances or regarding the identity or quantity of a controlled substance may be admissible in certain proceedings. **Section 1** of this bill provides that for purposes of determining the admissibility of such affidavits or declarations, the person may be qualified in any court of record in this State, rather than only in a district court in this State. **Section 1** also provides a definition of the term chemist for purposes of the provisions governing the admissibility of such affidavits and declarations. (NRS 50.320)

Section 2 of this bill authorizes a request to have such an affidavit or declaration admitted into evidence at trial for certain offenses to be personally served on the defendant's counsel or the defendant, rather than only sent by registered or certified mail. (NRS 50.325)

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

Section 1. NRS 50.320 is hereby amended to read as follows:

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

- (a) The quantity of the purported controlled substance; or
 - (b) The concentration of alcohol or the presence or absence of a controlled substance, chemical, poison, organic solvent or another prohibited substance, as the case may be,
- ↪ is admissible in the manner provided in this section.

2. An affidavit or declaration which is submitted to prove any fact set forth in subsection 1 must be admitted into evidence when submitted during any administrative proceeding, preliminary



hearing or hearing before a grand jury. The court shall not sustain any objection to the admission of such an affidavit or declaration.

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

4. The Committee on Testing for Intoxication shall adopt regulations prescribing the form of the affidavits and declarations described in this section.

5. As used in this section, "chemist" means any person employed in a medical laboratory, pathology laboratory, toxicology laboratory or forensic laboratory whose duties include, without limitation:

(a) The analysis of the breath, blood or urine of a person to determine the presence or quantification of alcohol or a controlled substance, chemical, poison, organic solvent or another prohibited substance; or

(b) Determining the identity or quantity of any controlled substance.

Sec. 2. NRS 50.325 is hereby amended to read as follows:

50.325 1. If a person is charged with an offense listed in subsection 4, and it is necessary to prove:

(a) The existence of any alcohol;

(b) The quantity of a controlled substance; or

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

↳ the prosecuting attorney may request that the affidavit or declaration of an expert or other person described in NRS 50.315 and 50.320 be admitted into evidence at the preliminary hearing, hearing before a grand jury or trial concerning the offense. Except as otherwise provided in NRS 50.315 and 50.320, the affidavit or declaration must be admitted into evidence at the trial.

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

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

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



personally served on the defendant's counsel or the defendant;
and

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

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

4. The provisions of this section apply to any of the following offenses:

(a) An offense punishable pursuant to NRS 202.257, 455A.170, 455B.080, 493.130 or 639.283.

(b) An offense punishable pursuant to chapter 453, 484 or 488 of NRS.

(c) A homicide resulting 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 or resulting from any other conduct prohibited by NRS 484.379, 484.3795, 484.37955, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425.

(d) Any other offense for which it is necessary to prove, as an element of the offense:

- (1) The existence of any alcohol;
- (2) The quantity of a controlled substance; or
- (3) The existence or identity of a controlled substance, chemical, poison, organic solvent or another prohibited substance.

