

SENATE BILL NO. 175—COMMITTEE ON TRANSPORTATION

FEBRUARY 20, 2013

Referred to Committee on Transportation

SUMMARY—Revises provisions relating to testing to determine the concentration of alcohol in a person's breath. (BDR 43-184)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 public safety; revising the manner in which a chemical solution or gas used in calibrating a device for testing a person's breath to determine the concentration of alcohol in the person's breath is presumed to be properly prepared and suitable for use in calibrating the device; revising provisions concerning the affidavit or declaration used in criminal or administrative proceedings to prove that a chemical solution or gas has the chemical composition necessary for accurately calibrating such a device; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a chemical solution or gas used in calibrating a device for testing a person's breath to determine the concentration of alcohol in his or her breath is presumed to be properly prepared and suitable for use in calibrating the device if: (1) a manufacturer or technician in a laboratory prepares the chemical solution or gas; 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. (NRS 484C.190, 488.510) Existing law further provides that the affidavit or declaration of the person who prepared the chemical solution or gas is admissible in a criminal or administrative proceeding to prove that the solution or gas has the chemical composition necessary for accurately calibrating the device. (NRS 50.315)

This bill revises provisions governing the manner in which a chemical solution or gas is determined to have the chemical composition necessary for accurately calibrating, or verifying the calibration of, a device for testing a person's breath to determine the concentration of alcohol in his or her breath. Rather than requiring an affidavit or declaration by the person who prepares the chemical solution or gas,



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sections 1 and 2 of this bill provide that the chemical solution or gas used in calibrating, or verifying the calibration of, a device is presumed to be properly prepared and suitable for use in calibrating, or verifying the calibration of, a device if a person who is certified to calibrate a device by the Director of the Department of Public Safety under existing law and regulations: (1) examines the chemical solution or gas; (2) confirms the concentration of alcohol contained in the chemical solution or gas; and (3) makes an affidavit or declaration which identifies the concentration of alcohol in the chemical solution or gas and which states that the chemical solution or gas has the chemical composition that is necessary for use in accurately calibrating, or verifying the calibration of, a device. Under section 3 of this bill, the affidavit or declaration of the person who examined the chemical solution or gas is admissible in a criminal or administrative proceeding to prove that the chemical solution or gas has the chemical composition necessary for accurately calibrating, or verifying the calibration of, a device. Section 4 of this bill provides that the amendatory provisions of this bill do not affect tests to determine the concentration of alcohol in a person's breath that are performed before the effective date of this bill.

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

Section 1. NRS 484C.190 is hereby amended to read as follows:

484C.190 If:

1. A manufacturer or technician in a laboratory prepares a chemical solution or gas to be used in calibrating , *or to verify the calibration of*, a device for testing a person's breath to determine the concentration of alcohol in his or her breath; and

2. ~~The technician~~ *A person who is certified pursuant to NRS 484C.620 examines the solution or gas, confirms the concentration of alcohol contained in the solution or gas, and makes an affidavit or declaration that identifies the concentration of alcohol contained in the solution or gas and states that* the solution or gas has the chemical composition that is necessary for *use in accurately* calibrating , *or verifying the calibration of*, the device,
↳ it is presumed that the solution or gas has been properly prepared and is suitable for *use in* calibrating , *or verifying the calibration of*, the device.

Sec. 2. 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 , *or to verify the calibration of*, a device for testing a person's breath to determine the concentration of alcohol in his or her breath; and

2. ~~The technician~~ *A person who is certified pursuant to NRS 484C.620 examines the solution or gas, confirms the concentration of alcohol contained in the solution or gas and*



1 makes an affidavit or declaration that *identifies the concentration of*
2 *alcohol contained in the solution or gas and states that* the solution
3 or gas has the chemical composition that is necessary for *use in*
4 *accurately* calibrating , *or verifying the calibration of*, the device,
5 ➡ it is presumed that the solution or gas has been properly prepared
6 and is suitable for *use in* calibrating , *or verifying the calibration*
7 *of*, the device.

8 **Sec. 3.** NRS 50.315 is hereby amended to read as follows:

9 50.315 1. Except as otherwise provided in subsections 6 and
10 7, the affidavit or declaration of a person is admissible in evidence
11 in any criminal or administrative proceeding to prove:

12 (a) That the affiant or declarant has been certified by the
13 Director of the Department of Public Safety as being competent to
14 operate devices of a type certified by the Committee on Testing for
15 Intoxication as accurate and reliable for testing a person's breath to
16 determine the concentration of alcohol in his or her breath;

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

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

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

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

29 (b) That the solution or gas has the chemical composition
30 necessary for *use in* accurately calibrating ~~fat~~ , *or verifying the*
31 *calibration of, the device.*

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

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

38 (b) That on a specified date the affiant or declarant calibrated the
39 device at a named law enforcement agency by using the procedures
40 and equipment prescribed in the regulations of the Committee on
41 Testing for Intoxication;

42 (c) That the calibration was performed within the period
43 required by the Committee's regulations; and

44 (d) Upon completing the calibration of the device, it was
45 operating properly.



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

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

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

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

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

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

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

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

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

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

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

31 (b) It is in the best interests of justice that the witness who
32 signed the affidavit or declaration be cross-examined,

33 ➔ the court may order the prosecution to produce the witness and
34 may continue the trial for any time the court deems reasonably
35 necessary to receive such testimony. The time within which a trial is
36 required is extended by the time of the continuance.

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



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

4 **Sec. 4.** The amendatory provisions of this act do not apply to a
5 test of a person's breath to determine the concentration of alcohol in
6 his or her breath that is performed before the effective date of this
7 act.

8 **Sec. 5.** This act becomes effective upon passage and approval.

