

ASSEMBLY BILL NO. 67—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)

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 provisions governing the admission into evidence of certain affidavits and declarations in certain criminal proceedings; specifying certain conditions under which a person is deemed not to be in actual physical control of a vehicle; revising provisions governing the administration of certain tests for the presence of alcohol, controlled substances and prohibited substances; revising provisions concerning the revocation of a license, permit or privilege to drive; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law makes it unlawful for a person to drive, operate or be in actual
2 physical control of a vehicle or vessel while under the influence of intoxicating
3 liquor or a controlled substance, or both. (NRS 484C.110, 484C.120, 488.410)
4 **Sections 9.3 and 20** of this bill define the term “under the influence” for the
5 purposes of existing law relating to driving, operating or being in actual physical
6 control of a vehicle or vessel while under the influence of intoxicating liquor or a
7 controlled substance, or both. **Section 9.5** of this bill provides that a person shall be
8 deemed not to be in actual physical control of a vehicle if: (1) the person is asleep
9 inside the vehicle; and (2) the vehicle is lawfully parked.
10 Existing law allows the affidavits and declarations of certain persons to be
11 admitted as evidence during a criminal proceeding to prove certain facts relating to
12 the testing of the blood, breath or urine of a defendant to determine the presence or



13 concentration of alcohol or certain other substances. In a felony trial, if the
14 defendant objects in writing to the admission of such affidavits or declarations, the
15 court must not admit the affidavit or declaration into evidence and the prosecution
16 may cause the witness to testify at trial concerning the information contained in the
17 affidavit or declaration. A defendant in a misdemeanor trial, however, must also
18 establish that: (1) there is a substantial and bona fide dispute between the
19 prosecution and the defense regarding the facts in the declaration; and (2) it is in the
20 best interests of justice that the witness who signed the affidavit or declaration be
21 cross-examined. (NRS 50.315) The Nevada Supreme Court has held that the
22 additional requirements imposed on a misdemeanor defendant under existing law
23 violate a defendant's constitutional right to confront the witnesses against him or
24 her and are therefore unconstitutional. (*City of Reno v. Howard*, 130 Nev. Adv. Op.
25 12, 318 P.3d 1063 (2014))

26 **Section 1** of this bill eliminates the constitutional defect identified by the
27 Nevada Supreme Court and provides instead that an affidavit or declaration must
28 not be admitted as evidence during a misdemeanor trial to prove certain facts
29 relating to the testing of the blood, breath or urine of a defendant to determine the
30 presence or concentration of alcohol or certain other substances if, not later than 10
31 days before the date set for trial or such shorter time before the date set for trial as
32 authorized by the court, the defendant objects in writing to the admission of the
33 affidavit or declaration. Under **section 1**, if the affidavit or declaration is not
34 admitted into evidence, the prosecution may produce the witness to provide
35 testimony at trial concerning the information contained in the affidavit or
36 declaration at trial.

37 Under existing law, a person who drives a vehicle in this State is deemed to
38 have given his or her consent to an evidentiary test of his or her blood, urine, breath
39 or other bodily substance to determine the concentration of alcohol in his or her
40 blood or breath or to determine whether a controlled substance, chemical, poison,
41 organic solvent or another prohibited substance is present. If a person who has thus
42 given his or her "implied consent" to an evidentiary test refuses to submit to the test
43 when directed to do so by a police officer who has reason to believe that the person
44 was driving a vehicle or operating a vessel while under the influence of alcohol or a
45 controlled substance, existing law authorizes the police officer to direct that
46 reasonable force be used to obtain a sample of blood from the person to be tested.
47 (NRS 484C.160) The Nevada Supreme Court has held that the consent implied by a
48 person's decision to drive in this State is not voluntary consent to an evidentiary
49 blood test and, thus, existing laws that allow a police officer to obtain a blood
50 sample from a person without a warrant and without voluntary consent are
51 unconstitutional. (*Byars v. State*, 130 Nev. Adv. Op. No. 85, 336 P.3d 939 (2014))

52 **Sections 12 and 14** of this bill eliminate the constitutional defect identified by
53 the Nevada Supreme Court and provide instead that if a person refuses to submit to
54 an evidentiary blood test at the request of a police officer: (1) the officer may apply
55 for a warrant or other court order directing the use of reasonable force to obtain the
56 blood sample; and (2) the person's driver's license must be revoked for a certain
57 period. **Section 14** further authorizes the revocation of a person's license, permit or
58 privilege to drive if an evidentiary test reveals the presence of a detectable amount
59 of a controlled substance or prohibited substance in his or her blood or urine for
60 which he or she did not have a valid prescription or hold a valid registry
61 identification card. **Sections 15 and 16** of this bill make corresponding revisions to
62 provisions of existing law which establish the procedure for effecting such a
63 revocation and provide for an administrative hearing to challenge such a
64 revocation. **Section 25** of this bill makes comparable changes to existing law
65 concerning the evidentiary tests of persons who operate or exercise actual physical
66 control over vessels on the waters of this State. **Section 5** of this bill makes



67 comparable changes to existing law concerning evidentiary tests of persons who
68 have actual physical possession of a firearm.

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
3 7, the affidavit or declaration of a person is admissible in evidence
4 in any criminal or administrative proceeding to prove:
5 (a) That the affiant or declarant has been certified by the
6 Director of the Department of 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 concentration of alcohol in his or her breath;
10 (b) The identity of a person from whom the affiant or declarant
11 obtained a sample of breath; and
12 (c) That the affiant or declarant tested the sample using a device
13 of a type so certified and that the device was functioning properly.
14 2. Except as otherwise provided in subsections 6 and 7, the
15 affidavit or declaration of a person who has examined a prepared
16 chemical solution or gas that has been used in calibrating, or
17 verifying the calibration of, a device for testing another's breath to
18 determine the concentration of alcohol in his or her breath is
19 admissible in evidence in any criminal or administrative proceeding
20 to prove:
21 (a) The occupation of the affiant or declarant; and
22 (b) That the solution or gas has the chemical composition
23 necessary for use in accurately calibrating, or verifying the
24 calibration of, the device.
25 3. Except as otherwise provided in subsections 6 and 7, the
26 affidavit or declaration of a person who calibrates a device for
27 testing another's breath to determine the concentration of alcohol in
28 his or her breath is admissible in evidence in any criminal or
29 administrative proceeding to prove:
30 (a) The occupation of the affiant or declarant;
31 (b) That on a specified date the affiant or declarant calibrated the
32 device at a named law enforcement agency by using the procedures
33 and equipment prescribed in the regulations of the Committee on
34 Testing for Intoxication;
35 (c) That the calibration was performed within the period
36 required by the Committee's regulations; and
37 (d) Upon completing the calibration of the device, it was
38 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,~~ *not later than 10 days*
28 *before the date set for trial or such shorter time before the date set*
29 *for trial as authorized by the court,* the defendant ~~establishes that:~~

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

32 ~~—(b) It is in the best interests of justice that the witness who~~
33 ~~signed the affidavit or declaration be cross examined,]~~ *objects in*
34 *writing to admitting into evidence the affidavit or declaration,*

35 ~~+~~ ~~→~~ *the court shall not admit the affidavit or declaration into*
36 *evidence and* may order the prosecution to produce the witness and
37 may continue the trial for any time the court deems reasonably
38 necessary to receive such testimony. The time within which a trial is
39 required is extended by the time of the continuance.

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



1 may cause the person to testify to any information contained in the
2 affidavit or declaration.

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

6 **Sec. 2.** (Deleted by amendment.)

7 **Sec. 3.** (Deleted by amendment.)

8 **Sec. 4.** (Deleted by amendment.)

9 **Sec. 5.** NRS 202.257 is hereby amended to read as follows:

10 202.257 1. It is unlawful for a person who:

11 (a) Has a concentration of alcohol of 0.10 or more in his or her
12 blood or breath; or

13 (b) Is under the influence of any controlled substance, or is
14 under the combined influence of intoxicating liquor and a controlled
15 substance, or any person who inhales, ingests, applies or otherwise
16 uses any chemical, poison or organic solvent, or any compound or
17 combination of any of these, to a degree which renders him or her
18 incapable of safely exercising actual physical control of a firearm,
19 to have in his or her actual physical possession any firearm. This
20 prohibition does not apply to the actual physical possession of a
21 firearm by a person who was within the person's personal residence
22 and had the firearm in his or her possession solely for self-defense.

23 2. Any evidentiary test to determine whether a person has
24 violated the provisions of subsection 1 must be administered in the
25 same manner as an evidentiary test that is administered pursuant to
26 NRS 484C.160 to 484C.250, inclusive, except that submission to
27 the evidentiary test is required of any person who is ~~directed~~
28 *requested* by a police officer to submit to the test. If a person to be
29 tested fails to submit to a required test as ~~directed~~ *requested* by a
30 police officer, the officer may ~~direct~~ *apply for a warrant or court*
31 *order directing* that reasonable force be used to the extent necessary
32 to obtain the samples of blood from the person to be tested, if the
33 officer has reasonable cause to believe that the person to be tested
34 was in violation of this section.

35 3. Any person who violates the provisions of subsection 1 is
36 guilty of a misdemeanor.

37 4. A firearm is subject to forfeiture pursuant to NRS 179.1156
38 to 179.119, inclusive, only if, during the violation of subsection 1,
39 the firearm is brandished, aimed or otherwise handled by the person
40 in a manner which endangered others.

41 5. As used in this section, the phrase "concentration of alcohol
42 of 0.10 or more in his or her blood or breath" means 0.10 gram or
43 more of alcohol per 100 milliliters of the blood of a person or per
44 210 liters of his or her breath.

45 **Sec. 6.** (Deleted by amendment.)



1 **Sec. 7.** (Deleted by amendment.)

2 **Sec. 8.** (Deleted by amendment.)

3 **Sec. 9.** Chapter 484C of NRS is hereby amended by adding
4 thereto the provisions set forth as sections 9.3 and 9.5 of this act.

5 **Sec. 9.3.** *“Under the influence” means impaired to a degree*
6 *that renders a person incapable of safely driving or exercising*
7 *actual physical control of a vehicle.*

8 **Sec. 9.5.** *For the purposes of this chapter, a person shall be*
9 *deemed not to be in actual physical control of a vehicle if:*

10 1. *The person is asleep inside the vehicle; and*

11 2. *The vehicle is lawfully parked.*

12 **Sec. 10.** NRS 484C.010 is hereby amended to read as follows:

13 484C.010 As used in this chapter, unless the context otherwise
14 requires, the words and terms defined in NRS 484C.020 to
15 484C.100, inclusive, *and section 9.3 of this act* have the meanings
16 ascribed to them in those sections.

17 **Sec. 11.** NRS 484C.150 is hereby amended to read as follows:

18 484C.150 1. Any person who drives or is in actual physical
19 control of a vehicle on a highway or on premises to which the public
20 has access shall be deemed to have given his or her consent to a
21 preliminary test of his or her breath to determine the concentration
22 of alcohol in his or her breath when the test is administered at the
23 ~~direction~~ *request* of a police officer at the scene of a vehicle
24 accident or collision or where the police officer stops a vehicle, if
25 the officer has reasonable grounds to believe that the person to be
26 tested was:

27 (a) Driving or in actual physical control of a vehicle while under
28 the influence of intoxicating liquor or a controlled substance; or

29 (b) Engaging in any other conduct prohibited by NRS 484C.110,
30 484C.120, 484C.130 or 484C.430.

31 2. If the person fails to submit to the test, the officer shall
32 ~~seize~~ :

33 (a) *Seize* the license or permit of the person to drive as provided
34 in NRS 484C.220 ; and

35 (b) *If reasonable grounds otherwise exist*, arrest the person and
36 take him or her to a convenient place for the administration of a
37 reasonably available evidentiary test under NRS 484C.160.

38 3. The result of the preliminary test must not be used in any
39 criminal action, except to show there were reasonable grounds to
40 make an arrest.

41 **Sec. 12.** NRS 484C.160 is hereby amended to read as follows:

42 484C.160 1. Except as otherwise provided in subsections ~~3~~
43 ~~and 4,~~ *4 and 5*, any person who drives or is in actual physical
44 control of a vehicle on a highway or on premises to which the public
45 has access shall be deemed to have given his or her consent to an



1 evidentiary test of his or her blood, urine, breath or other bodily
2 substance to determine the concentration of alcohol in his or her
3 blood or breath or to determine whether a controlled substance,
4 chemical, poison, organic solvent or another prohibited substance is
5 present, if such a test is administered at the ~~[direction]~~ *request* of a
6 police officer having reasonable grounds to believe that the person
7 to be tested was:

8 (a) Driving or in actual physical control of a vehicle while under
9 the influence of intoxicating liquor or a controlled substance ~~[:]~~ or
10 *with a prohibited substance in his or her blood or urine; or*

11 (b) Engaging in any other conduct prohibited by NRS 484C.110,
12 484C.120, 484C.130 or 484C.430.

13 2. *A police officer who requests that a person submit to a test*
14 *pursuant to subsection 1 shall inform the person that his or her*
15 *license, permit or privilege to drive will be revoked if he or she*
16 *fails to submit to the test.*

17 3. If the person to be tested pursuant to subsection 1 is dead or
18 unconscious, the officer shall direct that samples of blood from the
19 person be tested.

20 ~~[:]~~ 4. Any person who is afflicted with hemophilia or with a
21 heart condition requiring the use of an anticoagulant as determined
22 by a physician is exempt from any blood test which may be required
23 pursuant to this section but must, when appropriate pursuant to the
24 provisions of this section, be required to submit to a breath or urine
25 test.

26 ~~[:]~~ 5. If the concentration of alcohol in the blood or breath of
27 the person to be tested is in issue:

28 (a) Except as otherwise provided in this section, the person may
29 refuse to submit to a blood test if means are reasonably available to
30 perform a breath test.

31 (b) The person may request a blood test, but if means are
32 reasonably available to perform a breath test when the blood test is
33 requested, and the person is subsequently convicted, the person must
34 pay for the cost of the blood test, including the fees and expenses of
35 witnesses *whose testimony* in court ~~[:]~~ *or an administrative hearing*
36 *is necessary because of the use of the blood test. The expenses of*
37 *such a witness may be assessed at an hourly rate of not less than:*

38 (1) *Fifty dollars for travel to and from the place of the*
39 *proceeding; and*

40 (2) *One hundred dollars for giving or waiting to give*
41 *testimony.*

42 (c) ~~[A police officer may direct the person to submit to a blood~~
43 ~~test if the officer has reasonable grounds to believe that the person:~~

44 ~~— (1) Caused death or substantial bodily harm to another~~
45 ~~person as a result of driving or being in actual physical control of a~~



1 ~~vehicle while under the influence of intoxicating liquor or a~~
2 ~~controlled substance or as a result of engaging in any other conduct~~
3 ~~prohibited by NRS 484C.110, 484C.130 or 484C.430; or~~

4 ~~—(2) Has been convicted within the previous 7 years of:~~

5 ~~—(I) A violation of NRS 484C.110, 484C.120, 484C.130,~~
6 ~~484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or~~
7 ~~488.425 or a law of another jurisdiction that prohibits the same or~~
8 ~~similar conduct; or~~

9 ~~—(II) Any other offense in this State or another jurisdiction~~
10 ~~in which death or substantial bodily harm to another person resulted~~
11 ~~from conduct prohibited by a law set forth in sub-subparagraph (I).~~

12 ~~—5.} Except as otherwise provided in NRS 484C.200, not more~~
13 ~~than three samples of the person's blood or breath may be taken~~
14 ~~during the 5-hour period immediately following the time of the~~
15 ~~initial arrest.~~

16 6. If the presence of a controlled substance, chemical, poison,
17 organic solvent or another prohibited substance in the blood or urine
18 of the person is in issue, the officer may ~~{direct}~~ **request that**
19 the person ~~{to}~~ submit to a blood or urine test, or both. ~~{, in addition to~~
20 ~~the breath test.~~

21 ~~—6.} 7. Except as otherwise provided in subsections {3 and 5.} 4~~
22 ~~and 6, a police officer shall not {direct} request that a person {to}~~
23 ~~submit to a urine test.~~

24 ~~{7.} 8. If a person to be tested fails to submit to a required test~~
25 ~~as {directed} requested by a police officer pursuant to this section~~
26 ~~and the officer has reasonable grounds to believe that the person to~~
27 ~~be tested was:~~

28 (a) Driving or in actual physical control of a vehicle while under
29 the influence of intoxicating liquor or a controlled substance ~~{;}~~ **or**
30 **with a prohibited substance in his or her blood or urine;**

31 (b) Engaging in any other conduct prohibited by NRS 484C.110,
32 484C.120, 484C.130 or 484C.430,

33 ~~↳ the officer may {direct} apply for a warrant or court order~~
34 ~~directing that reasonable force be used to the extent necessary to~~
35 ~~obtain samples of blood from the person to be tested. {Not more~~
36 ~~than three such samples may be taken during the 5-hour period~~
37 ~~immediately following the time of the initial arrest. In such a~~
38 ~~circumstance, the officer is not required to provide the person with a~~
39 ~~choice of tests for determining the concentration of alcohol or~~
40 ~~presence of a controlled substance or another prohibited substance~~
41 ~~in his or her blood.~~

42 ~~—8.} 9. If a person who is less than 18 years of age is {directed}~~
43 ~~requested to submit to an evidentiary test pursuant to this section,~~
44 ~~the officer shall, before testing the person, make a reasonable~~



1 attempt to notify the parent, guardian or custodian of the person, if
2 known.

3 **Sec. 13.** NRS 484C.200 is hereby amended to read as follows:

4 484C.200 1. Except as otherwise provided in subsection 2, an
5 evidentiary test of breath to determine the concentration of alcohol
6 in a person's breath may be used to establish that concentration only
7 if two consecutive samples of the person's breath are taken and:

8 (a) The difference between the concentration of alcohol in the
9 person's breath indicated by the two samples is less than or equal
10 to 0.02;

11 (b) If the provisions of paragraph (a) do not apply, a third
12 evidentiary test of breath is administered and the difference between
13 the concentration of alcohol in the person's breath indicated by the
14 third sample and one of the first two samples is less than or equal to
15 0.02; or

16 (c) If the provisions of paragraphs (a) and (b) do not apply, a
17 fourth evidentiary test is administered. Except as otherwise provided
18 in NRS 484C.160, the fourth evidentiary test must be a blood test.

19 2. If the person fails to provide the second or third consecutive
20 sample, or to submit to the fourth evidentiary test, the results of the
21 first test may be used alone as evidence of the concentration of
22 alcohol in the person's breath. If for some other reason a second,
23 third or fourth sample is not obtained, the results of the first test may
24 be used with all other evidence presented to establish the
25 concentration.

26 3. If a person refuses or otherwise fails to provide a second or
27 third consecutive sample or submit to a fourth evidentiary test, ~~fa~~
28 ~~police officer may direct that reasonable force be used to obtain a~~
29 ~~sample or conduct a test pursuant to~~ *such refusal or failure*
30 *constitutes a failure to submit to a required test as provided in*
31 NRS 484C.160.

32 **Sec. 14.** NRS 484C.210 is hereby amended to read as follows:

33 484C.210 1. *If a person fails to submit to an evidentiary test*
34 *as requested by a police officer pursuant to NRS 484C.160, the*
35 *license, permit or privilege to drive of the person must be revoked*
36 *as provided in NRS 484C.220, and the person is not eligible for a*
37 *license, permit or privilege to drive for a period of:*

38 (a) *One year; or*

39 (b) *Three years, if the license, permit or privilege to drive of*
40 *the person has been revoked during the immediately preceding 7*
41 *years for failure to submit to an evidentiary test.*

42 2. If the result of a test given under NRS 484C.150 or
43 484C.160 shows that a person had a concentration of alcohol of 0.08
44 or more in his or her blood or breath *or a detectable amount of a*
45 *controlled substance or prohibited substance in his or her blood or*



1 *urine for which he or she did not have a valid prescription, as*
2 *defined in NRS 453.128, or hold a valid registry identification*
3 *card, as defined in NRS 453A.140, at the time of the test, the*
4 license, permit or privilege of the person to drive must be revoked as
5 provided in NRS 484C.220 and the person is not eligible for a
6 license, permit or privilege for a period of 90 days.

7 ~~2-~~ 3. If a revocation of a person's license, permit or privilege
8 to drive under NRS 62E.640 or 483.460 follows a revocation under
9 subsection ~~H~~ 2 which was based on the person having a
10 concentration of alcohol of 0.08 or more in his or her blood or
11 breath, the Department shall cancel the revocation under that
12 subsection and give the person credit for any period during which
13 the person was not eligible for a license, permit or privilege.

14 ~~B~~ 4. Periods of ineligibility for a license, permit or privilege
15 to drive which are imposed pursuant to this section must run
16 consecutively.

17 **Sec. 15.** NRS 484C.220 is hereby amended to read as follows:

18 484C.220 1. As agent for the Department, the officer who
19 *requested that a test be given pursuant to NRS 484C.150 or*
20 *484C.160 or who* obtained the result of a test given pursuant to NRS
21 484C.150 or 484C.160 shall immediately serve an order of
22 revocation of the license, permit or privilege to drive on a person
23 who *failed to submit to a test requested by the police officer*
24 *pursuant to NRS 484C.150 or 484C.160 or who* has a concentration
25 of alcohol of 0.08 or more in his or her blood or breath or has a
26 detectable amount of a *controlled substance or* prohibited substance
27 in his or her blood or urine ~~H~~ *for which he or she did not have a*
28 *valid prescription, as defined in NRS 453.128, or hold a valid*
29 *registry identification card, as defined in NRS 453A.140, if that*
30 person is present, and shall seize the license or permit to drive of the
31 person. The officer shall then , *unless the information is expressly*
32 *set forth in the order of revocation,* advise the person of his or her
33 right to administrative and judicial review of the revocation pursuant
34 to NRS 484C.230 and, except as otherwise provided in this
35 subsection, that the person has a right to request a temporary license.
36 If the person currently is driving with a temporary license that was
37 issued pursuant to this section or NRS 484C.230, the person is not
38 entitled to request an additional temporary license pursuant to this
39 section or NRS 484C.230, and the order of revocation issued by the
40 officer must revoke the temporary license that was previously
41 issued. If the person is entitled to request a temporary license, the
42 officer shall issue the person a temporary license on a form
43 approved by the Department if the person requests one, which is
44 effective for only 7 days including the date of issuance. The officer
45 shall immediately transmit the person's license or permit to the



1 Department along with the written certificate required by
2 subsection 2.

3 2. When a police officer has served an order of revocation of a
4 driver's license, permit or privilege on a person pursuant to
5 subsection 1, or later receives the result of an evidentiary test which
6 indicates that a person, not then present, had a concentration of
7 alcohol of 0.08 or more in his or her blood or breath or had a
8 detectable amount of a *controlled substance or* prohibited substance
9 in his or her blood or urine ~~†~~ *for which he or she did not have a*
10 *valid prescription, as defined in NRS 453.128, or hold a valid*
11 *registry identification card, as defined in NRS 453A.140,* the
12 officer shall immediately prepare and transmit to the Department,
13 together with the seized license or permit and a copy of the result of
14 the test, *if any,* a written certificate that the officer had reasonable
15 grounds to believe that the person had been driving or in actual
16 physical control of a vehicle ~~†with†~~ :

17 (a) *With* a concentration of alcohol of 0.08 or more in his or her
18 blood or breath or with a detectable amount of a *controlled*
19 *substance or* prohibited substance in his or her blood or urine ~~†~~ *for*
20 *which he or she did not have a valid prescription, as defined in*
21 *NRS 453.128, or hold a valid registry identification card, as*
22 *defined in NRS 453A.140,* as determined by a chemical test ~~†~~ ; or

23 (b) *While under the influence of intoxicating liquor or a*
24 *controlled substance or with a prohibited substance in his or her*
25 *blood or urine and the person refused to submit to a required*
26 *evidentiary test.*

27 ↪ The certificate must also indicate whether the officer served an
28 order of revocation on the person and whether the officer issued the
29 person a temporary license.

30 3. The Department, upon receipt of such a certificate for which
31 an order of revocation has not been served, after examining the
32 certificate and copy of the result of the chemical test, if any, and
33 finding that revocation is proper, shall issue an order revoking the
34 person's license, permit or privilege to drive by mailing the order to
35 the person at the person's last known address. The order must
36 indicate the grounds for the revocation and the period during which
37 the person is not eligible for a license, permit or privilege to drive
38 and state that the person has a right to administrative and judicial
39 review of the revocation and to have a temporary license. The order
40 of revocation becomes effective 5 days after mailing.

41 4. Notice of an order of revocation and notice of the
42 affirmation of a prior order of revocation or the cancellation of a
43 temporary license provided in NRS 484C.230 is sufficient if it is
44 mailed to the person's last known address as shown by any
45 application for a license. The date of mailing may be proved by the



1 certificate of any officer or employee of the Department, specifying
2 the time of mailing the notice. The notice is presumed to have been
3 received upon the expiration of 5 days after it is deposited, postage
4 prepaid, in the United States mail.

5 **Sec. 16.** NRS 484C.230 is hereby amended to read as follows:

6 484C.230 1. At any time while a person is not eligible for a
7 license, permit or privilege to drive following an order of revocation
8 issued pursuant to NRS 484C.220, the person may request in writing
9 a hearing by the Department to review the order of revocation, but
10 the person is only entitled to one hearing. The hearing must be
11 conducted ~~[within 15 days after receipt of the request, or]~~ as soon
12 ~~[thereafter]~~ as is practicable ~~[in the county where the requester~~
13 ~~resides unless the parties agree otherwise.]~~ *at any location, if the*
14 *hearing officer permits each party and witness to attend the*
15 *hearing by telephone, videoconference or other electronic means.*
16 The Director or agent of the Director may issue subpoenas for the
17 attendance of witnesses and the production of relevant books and
18 papers and may require a reexamination of the requester. Unless the
19 person is ineligible for a temporary license pursuant to NRS
20 484C.220, the Department shall issue an additional temporary
21 license for a period which is sufficient to complete the
22 administrative review.

23 2. The scope of the hearing must be limited to the issue of
24 whether the person ~~[at]~~:

25 *(a) Failed to submit to a required test provided for in NRS*
26 *484C.150 or 484C.160; or*

27 *(b) At the time of the test, had a concentration of alcohol of 0.08*
28 *or more in his or her blood or breath or a detectable amount of a*
29 *controlled substance or prohibited substance in his or her blood or*
30 *urine [] for which he or she did not have a valid prescription, as*
31 *defined in NRS 453.128, or hold a valid registry identification*
32 *card, as defined in NRS 453A.140.*

33 *↳ Upon an affirmative finding on [this] either issue, the*
34 *Department shall affirm the order of revocation. Otherwise, the*
35 *order of revocation must be rescinded.*

36 3. If, after the hearing, the order of revocation is affirmed, the
37 person whose license, privilege or permit has been revoked is
38 entitled to a review of the same issues in district court in the same
39 manner as provided by chapter 233B of NRS. The court shall notify
40 the Department upon the issuance of a stay, and the Department
41 shall issue an additional temporary license for a period which is
42 sufficient to complete the review.

43 4. If a hearing officer grants a continuance of a hearing at the
44 request of the person whose license was revoked, or a court does so
45 after issuing a stay of the revocation, the officer or court shall notify



1 the Department, and the Department shall cancel the temporary
2 license and notify the holder by mailing the order of cancellation to
3 the person's last known address.

4 **Sec. 17.** NRS 484C.240 is hereby amended to read as follows:

5 484C.240 1. If a person refuses to submit to a required
6 chemical test provided for in NRS 484C.150 or 484C.160, evidence
7 of that refusal is admissible in any criminal or administrative action
8 arising out of acts alleged to have been committed while the person
9 was:

10 (a) Driving or in actual physical control of a vehicle while under
11 the influence of intoxicating liquor or a controlled substance ~~or~~ or
12 *with a prohibited substance in his or her blood or urine; or*

13 (b) Engaging in any other conduct prohibited by NRS 484C.110,
14 484C.120, 484C.130 or 484C.430.

15 2. Except as otherwise provided in subsection 3 of NRS
16 484C.150, a court or hearing officer may not exclude evidence of a
17 required test or failure to submit to such a test if the police officer or
18 other person substantially complied with the provisions of NRS
19 484C.150 to 484C.250, inclusive, and 484C.600 to 484C.640,
20 inclusive.

21 3. If a person submits to a chemical test provided for in NRS
22 484C.150 or 484C.160, full information concerning that test must be
23 made available, upon request of the person, to the person or his or
24 her attorney.

25 4. Evidence of a required test is not admissible in a criminal or
26 administrative proceeding unless it is shown by documentary or
27 other evidence that the law enforcement agency calibrated the
28 breath-testing device and otherwise maintained it as required by the
29 regulations of the Committee on Testing for Intoxication.

30 **Sec. 18.** NRS 484C.250 is hereby amended to read as follows:

31 484C.250 1. The results of any blood test administered under
32 the provisions of NRS 484C.160 or 484C.180 are not admissible in
33 any hearing or criminal action arising out of acts alleged to have
34 been committed by a person who was driving or in actual physical
35 control of a vehicle while under the influence of intoxicating liquor
36 or a controlled substance *or with a prohibited substance in his or*
37 *her blood or urine* or who was engaging in any other conduct
38 prohibited by NRS 484C.110, 484C.120, 484C.130 or 484C.430
39 unless:

40 (a) The blood tested was withdrawn by a person, other than an
41 arresting officer, who:

42 (1) Is a physician, physician assistant licensed pursuant to
43 chapter 630 or 633 of NRS, registered nurse, licensed practical
44 nurse, advanced emergency medical technician, paramedic or a



1 phlebotomist, technician, technologist or assistant employed in a
2 medical laboratory; or

3 (2) Has special knowledge, skill, experience, training and
4 education in withdrawing blood in a medically acceptable manner,
5 including, without limitation, a person qualified as an expert on that
6 subject in a court of competent jurisdiction or a person who has
7 completed a course of instruction that qualifies him or her to take an
8 examination in phlebotomy that is administered by the American
9 Medical Technologists or the American Society for Clinical
10 Pathology; and

11 (b) The test was performed on whole blood, except if the sample
12 was clotted when it was received by the laboratory, the test may be
13 performed on blood serum or plasma.

14 2. The limitation contained in paragraph (a) of subsection 1
15 does not apply to the taking of a chemical test of the urine, breath or
16 other bodily substance.

17 3. No person listed in paragraph (a) of subsection 1 incurs any
18 civil or criminal liability as a result of the administering of a blood
19 test when requested by a police officer or the person to be tested to
20 administer the test.

21 **Sec. 19.** (Deleted by amendment.)

22 **Sec. 20.** NRS 488.035 is hereby amended to read as follows:

23 488.035 As used in this chapter, unless the context otherwise
24 requires:

25 1. "Aquatic invasive species" means an aquatic species which
26 is exotic or not native to this State and which the Commission has
27 determined to be detrimental to aquatic life, water resources or
28 infrastructure for providing water in this State.

29 2. "Aquatic plant material" means aquatic plants or parts of
30 plants that are dependent on an aquatic environment to survive.

31 3. "Commission" means the Board of Wildlife Commissioners.

32 4. "Conveyance" means a motor vehicle, trailer or any other
33 equipment used to transport a vessel or containers or devices used to
34 haul water on a vessel that may contain or carry an aquatic invasive
35 species or aquatic plant material.

36 5. "Decontaminate" means eliminate any aquatic invasive
37 species on a vessel or conveyance in a manner specified by the
38 Commission which may include, without limitation, washing the
39 vessel or conveyance, draining the water in the vessel or
40 conveyance, drying the vessel or conveyance or chemically,
41 thermally or otherwise treating the vessel or conveyance.

42 6. "Department" means the Department of Wildlife.

43 7. "Flat wake" means the condition of the water close astern a
44 moving vessel that results in a flat wave disturbance.



1 8. "Interstate waters of this State" means waters forming the
2 boundary between the State of Nevada and an adjoining state.

3 9. "Legal owner" means a secured party under a security
4 agreement relating to a vessel or a renter or lessor of a vessel to the
5 State or any political subdivision of the State under a lease or an
6 agreement to lease and sell or to rent and purchase which grants
7 possession of the vessel to the lessee for a period of 30 consecutive
8 days or more.

9 10. "Motorboat" means any vessel propelled by machinery,
10 whether or not the machinery is the principal source of propulsion.

11 11. "Operate" means to navigate or otherwise use a motorboat
12 or a vessel.

13 12. "Owner" means:

14 (a) A person having all the incidents of ownership, including the
15 legal title of a vessel, whether or not he or she lends, rents or
16 pledges the vessel; and

17 (b) A debtor under a security agreement relating to a vessel.

18 ➔ "Owner" does not include a person defined as a "legal owner"
19 under subsection 9.

20 13. "Prohibited substance" has the meaning ascribed to it in
21 NRS 484C.080.

22 14. "Registered owner" means the person registered by the
23 Commission as the owner of a vessel.

24 15. *"Under the influence" means impaired to a degree that*
25 *renders a person incapable of safely operating or exercising actual*
26 *physical control of a vessel.*

27 16. A vessel is "under way" if it is adrift, making way or being
28 propelled, and is not aground, made fast to the shore, or tied or
29 made fast to a dock or mooring.

30 ~~H6-1~~ 17. "Vessel" means every description of watercraft, other
31 than a seaplane on the water, used or capable of being used as a
32 means of transportation on water.

33 ~~H7-1~~ 18. "Waters of this State" means any waters within the
34 territorial limits of this State.

35 **Sec. 21.** (Deleted by amendment.)

36 **Sec. 22.** (Deleted by amendment.)

37 **Sec. 23.** (Deleted by amendment.)

38 **Sec. 24.** NRS 488.450 is hereby amended to read as follows:

39 488.450 1. Any person who operates or is in actual physical
40 control of a vessel under power or sail on the waters of this State
41 shall be deemed to have given consent to a preliminary test of his or
42 her breath to determine the concentration of alcohol in his or her
43 breath when the test is administered at the ~~direction~~ *request* of a
44 peace officer after a vessel accident or collision or where an officer



1 stops a vessel, if the officer has reasonable grounds to believe that
2 the person to be tested was:

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

6 (b) Engaging in any other conduct prohibited by NRS 488.410,
7 488.420 or 488.425.

8 2. If the person fails to submit to the test, the officer shall , *if*
9 *reasonable grounds otherwise exist*, arrest the person and take him
10 or her to a convenient place for the administration of a reasonably
11 available evidentiary test under NRS 488.460.

12 3. The result of the preliminary test must not be used in any
13 criminal action, except to show there were reasonable grounds to
14 make an arrest.

15 **Sec. 25.** NRS 488.460 is hereby amended to read as follows:

16 488.460 1. Except as otherwise provided in subsections 3 and
17 4, a person who operates or is in actual physical control of a vessel
18 under power or sail on the waters of this State shall be deemed to
19 have given consent to an evidentiary test of his or her blood, urine,
20 breath or other bodily substance to determine the concentration of
21 alcohol in his or her blood or breath or to determine whether a
22 controlled substance, chemical, poison, organic solvent or another
23 prohibited substance is present, if such a test is administered at the
24 ~~direction~~ *request* of a peace officer having reasonable grounds to
25 believe that the person to be tested was:

26 (a) Operating or in actual physical control of a vessel under
27 power or sail while under the influence of intoxicating liquor or a
28 controlled substance ~~+~~ or *with a prohibited substance in his or her*
29 *blood or urine; or*

30 (b) Engaging in any other conduct prohibited by NRS 488.410,
31 488.420 or 488.425.

32 2. If the person to be tested pursuant to subsection 1 is dead or
33 unconscious, the officer shall direct that samples of blood from the
34 person be tested.

35 3. Any person who is afflicted with hemophilia or with a heart
36 condition requiring the use of an anticoagulant as determined by a
37 physician is exempt from any blood test which may be required
38 pursuant to this section, but must, when appropriate pursuant to the
39 provisions of this section, be required to submit to a breath or urine
40 test.

41 4. If the concentration of alcohol of the blood or breath of the
42 person to be tested is in issue:

43 (a) Except as otherwise provided in this section, the person may
44 refuse to submit to a blood test if means are reasonably available to
45 perform a breath test.



1 (b) The person may request a blood test, but if means are
2 reasonably available to perform a breath test when the blood test is
3 requested, and the person is subsequently convicted, the person must
4 pay for the cost of the blood test, including the fees and expenses of
5 witnesses *whose testimony* in court ***[+] is necessary because of the***
6 ***use of the blood test. The expenses of such a witness may be***
7 ***assessed at an hourly rate of not less than:***

8 (1) *Fifty dollars for travel to and from the place of the*
9 *proceeding; and*

10 (2) *One hundred dollars for giving or waiting to give*
11 *testimony.*

12 (c) ~~IA peace officer may direct the person to submit to a blood~~
13 ~~test if the officer has reasonable grounds to believe that the person:~~

14 ~~—— (1) Caused death or substantial bodily harm to another~~
15 ~~person as a result of operating or being in actual physical control~~
16 ~~of a vessel under power or sail while under the influence of~~
17 ~~intoxicating liquor or a controlled substance or as a result of~~
18 ~~engaging in any other conduct prohibited by NRS 488.410, 488.420~~
19 ~~or 488.425; or~~

20 ~~—— (2) Has been convicted within the previous 7 years of:~~

21 ~~—— (I) A violation of NRS 484C.110, 484C.120, 484C.130,~~
22 ~~484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or~~
23 ~~488.425 or a law of another jurisdiction that prohibits the same or~~
24 ~~similar conduct; or~~

25 ~~—— (II) Any other offense in this State or another jurisdiction~~
26 ~~in which death or substantial bodily harm to another person resulted~~
27 ~~from conduct prohibited by a law set forth in sub-subparagraph (I).]~~

28 ***Except as otherwise provided in NRS 488.470, not more than three***
29 ***samples of the person's blood or breath may be taken during the***
30 ***5-hour period immediately following the time of the initial arrest.***

31 5. If the presence of a controlled substance, chemical, poison,
32 organic solvent or another prohibited substance in the blood or urine
33 of the person is in issue, the officer may ***[direct]*** ***request that***
34 ***the person [to]*** submit to a blood or urine test, or both. ~~*[, in addition to*~~
35 ~~*the breath test.]*~~

36 6. Except as otherwise provided in subsections 3 and 5, a peace
37 officer shall not ***[direct]*** ***request that*** a person ***[to]*** submit to a urine
38 test.

39 7. If a person to be tested fails to submit to a required test as
40 ***[directed]*** ***requested*** by a peace officer pursuant to this section and
41 the officer has reasonable grounds to believe that the person to be
42 tested was:

43 (a) Operating or in actual physical control of a vessel under
44 power or sail while under the influence of intoxicating liquor or a



1 controlled substance ~~§~~ or *with a prohibited substance in his or her*
2 *blood or urine; or*

3 (b) Engaging in any other conduct prohibited by NRS 488.410,
4 488.420 or 488.425,

5 ~~the officer may ~~direct~~ apply for a warrant or court order~~
6 *directing* that reasonable force be used to the extent necessary to
7 obtain samples of blood from the person to be tested. ~~Not more~~
8 ~~than three such samples may be taken during the 5-hour period~~
9 ~~immediately following the time of the initial arrest. In such a~~
10 ~~circumstance, the officer is not required to provide the person with~~
11 ~~a choice of tests for determining the alcoholic content or presence of~~
12 ~~a controlled substance or another prohibited substance in the~~
13 ~~person's blood.~~

14 *8. If a person who is less than 18 years of age is requested to*
15 *submit to an evidentiary test pursuant to this section, the officer*
16 *shall, before testing the person, make a reasonable attempt to*
17 *notify the parent, guardian or custodian of the person, if known.*

18 **Sec. 26.** NRS 488.470 is hereby amended to read as follows:

19 488.470 1. Except as otherwise provided in subsection 2, an
20 evidentiary test of breath to determine the concentration of alcohol
21 in a person's breath may be used to establish that concentration only
22 if two consecutive samples of the person's breath are taken and:

23 (a) The difference between the concentration of alcohol in the
24 person's breath indicated by the two samples is less than or equal to
25 0.02;

26 (b) If the provisions of paragraph (a) do not apply, a third
27 evidentiary test of breath is administered and the difference between
28 the concentration of alcohol in the person's breath indicated by the
29 third sample and one of the first two samples is less than or equal to
30 0.02; or

31 (c) If the provisions of paragraphs (a) and (b) do not apply, a
32 fourth evidentiary test is administered. Except as otherwise provided
33 in NRS 488.460, the fourth evidentiary test must be a blood test.

34 2. If the person fails to provide the second or third consecutive
35 sample, or to submit to the fourth evidentiary test, the results of the
36 first test may be used alone as evidence of the concentration of
37 alcohol in the person's breath. If for some other reason a second,
38 third or fourth sample is not obtained, the results of the first test may
39 be used with all other evidence presented to establish the
40 concentration.

41 3. If a person refuses or otherwise fails to provide a second or
42 third consecutive sample or submit to a fourth evidentiary test, ~~a~~
43 ~~peace officer may direct that reasonable force be used to obtain a~~
44 ~~sample or conduct a test pursuant to~~ *such refusal or failure*



1 *constitutes a failure to submit to a required evidentiary test as*
2 *provided in* NRS 488.460.

3 **Sec. 27.** (Deleted by amendment.)

4 **Sec. 28.** (Deleted by amendment.)

5 **Sec. 29.** NRS 488.500 is hereby amended to read as follows:

6 488.500 1. The results of any blood test administered under
7 the provisions of NRS 488.460 or 488.490 are not admissible in any
8 criminal action arising out of acts alleged to have been committed
9 by a person who was operating or in actual physical control of a
10 vessel under power or sail while under the influence of intoxicating
11 liquor or a controlled substance or *with a prohibited substance in*
12 *his or her blood or urine or* who was engaging in any other conduct
13 prohibited by NRS 488.410, 488.420 or 488.425 unless:

14 (a) The blood tested was withdrawn by a person, other than an
15 arresting officer, who:

16 (1) Is a physician, registered nurse, licensed practical nurse,
17 advanced emergency medical technician, paramedic or a
18 phlebotomist, technician, technologist or assistant employed in a
19 medical laboratory; or

20 (2) Has special knowledge, skill, experience, training and
21 education in withdrawing blood in a medically acceptable manner,
22 including, without limitation, a person qualified as an expert on that
23 subject in a court of competent jurisdiction or a person who has
24 completed a course of instruction that qualifies him or her to take an
25 examination in phlebotomy that is administered by the American
26 Medical Technologists or the American Society for Clinical
27 Pathology; and

28 (b) The test was performed on whole blood, except if the sample
29 was clotted when it was received by the laboratory, the test may be
30 performed on blood serum or plasma.

31 2. The limitation contained in paragraph (a) of subsection 1
32 does not apply to the taking of a chemical test of the urine, breath or
33 other bodily substance.

34 3. No person listed in paragraph (a) of subsection 1 incurs any
35 civil or criminal liability as a result of the administering of a blood
36 test when requested by a peace officer or the person to be tested to
37 administer the test.

38 **Sec. 30.** (Deleted by amendment.)

39 **Sec. 31.** 1. This section and sections 2 to 30, inclusive, of
40 this act become effective upon passage and approval.

41 2. Section 1 of this act becomes effective on July 1, 2015.



