

LCB File No. 112-97
Notice of Workshop to Solicit Comments on Proposed Regulations

Date: February 27, 1998

The Department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication, is proposing to amend regulations pertaining to chapters 50 and 484 of the Nevada Administrative Code. A workshop has been set for 9:00 A.M., March 30, 1998 at the Washoe County Sheriff's Office, 900 Parr Blvd., Reno, NV 89512. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulation amendments.

Topics to be discussed:

1. Allowing the DMV/PS Director's "agent or designee" to act on behalf of the director in matters pertaining to the Committee on Testing for Intoxication.
2. Establishing minimum requirements for approved devices that prevent an intoxicated person from starting a vehicle.
3. Establishing calibration of approved preventative devices.
4. Describing what preventative devices are approved; and
5. Preliminary breath-testing devices and who can repair and/or calibrate the same.

A copy of this notice and the proposed amendments will be on file at the State Library, 100 Stewart Street, Carson city, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the amendments will be available at the Department of Motor Vehicles and Public Safety, 555 Wright Way, Carson City, NV 89711 and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public, upon request, by calling Liz Reville, Program Assistant, at (702) 687-5720. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Motor Vehicles & Public Safety Carson City, Nevada 89711
555 Wright Way

US Post Office
311 East Washington
Carson City, NV 89701

Nevada State Library
401 North Carson
Carson City, NV 89710

Washoe County Sheriff's Office
911 Parr Blvd.
Reno, NV 89152

Motor Vehicles & Public Safety
Drivers License Division
305 Galletti Way
Reno, NV 89502
Fax 688-2328

Motor Vehicles and Public Safety
Drivers License Division
2701 East Sahara Avenue
Las Vegas, NV 89104
Fax 486-4291

Department of Motor Vehicles & Public Safety
Drivers License Division
3920 Idaho Street
Elko, NV 89801
Fax 738-9856

City of Las Vegas Council Chambers
City Hall
400 East Stewart
Las Vegas, NV 89101
Fax 388-1807

Reno City Council Chambers
490 South Center Street
Reno, NV 89501
Fax 334-2097

Department of Motor Vehicles & Public Safety
973 W. Williams St.

Fallon, NV 89406
Fax 423-2797

Department of Motor Vehicles & Public Safety
8250 W. Flamingo
Las Vegas, NV 89117
Fax 4860-8606

Department of Motor Vehicles & Public Safety
178 Avenue F
Ely, NV 89301
Fax 289-1607

Department of Motor Vehicles & Public Safety
4021 W. Carey
North Las Vegas, NV 89030
Fax 486-5193

Department of Motor Vehicles & Public Safety
300 Ridgeway Dr.
Tonopah, NV 89049
Fax 623-6508

Department of Motor Vehicles & Public Safety
3505 Construction Way
Winnemucca, NV 89445
Fax 623-6508

Department of Motor Vehicles & Public Safety
215 West Bridge St.
Yerington, NV 89447
Fax 463-4046

Department of Motor Vehicles & Public Safety
1694 County Road
Minden, NV 89423
Fax 782-0202

Goldfield Public Library
Fourth & Crook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Battle Mountain Branch Library
625 Broad Street
Battle Mountain, NV 89820
Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043
Fax 962-5244

Mineral County Library

First & A Street
P.O. Box 1390
Hawthorne, NV 89415
Fax 945-0703

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419
Fax 273-7058

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440
Fax 847-0996

Reasonable accommodations for members of the public who are disabled and wish to attend the meeting may be arranged by notifying Paul Corbin, Highway Safety Coordinator, Office of Traffic Safety (702) 687-5720

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the Department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication

The Department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication, will hold a public hearing at 10:00 A.M. on Monday, March 30, 1998, at the Washoe County Sheriff's Office, 900 Parr Blvd., Reno, Nevada, 89512. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations pertaining to chapters 50 and 484 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060:

1. With the passage of DUI legislation that became effective October 1, 1997, the Committee on Testing for Intoxication wants to amend pertinent regulations reflect the most recent legislative changes and best practices.
2. The proposed regulation changes include:
 - (1) Revisions to the regulations dealing with the required affidavit forms to reflect the accepted use of affidavits or declarations pursuant to NAC 50.010, 50.020 (also adds language "grams per 210 liters of breath"), 50.030, 50.040 (also adds language "grams per 210 liters of breath"), 50.050, 50.060;
 - (2) Addition to the approved list of preliminary breath testing devices to include the Breathalyzer 7410, manufactured by Draeger (NAC 484.605);
 - (3) Revisions to NAC 484.607 cleaning up the introductory language and adding the Draeger Interlock to the list of approved interlock devices;
 - (4) NAC 484.610 is revised to provide for the director's "designee" to perform certain duties in the procedures to be added to the approved list of evidential breath testing devices;
 - (5) NAC 484.615 is revised to provide for the director's "designee" to perform certain duties in the procedures to be added to the list of approved preliminary breath-testing devices;
 - (6) NAC 484.617 provides for the director's "designee" to perform certain duties associated with changing the list of approved devices that prevents an intoxicated person from starting a vehicle;
 - (7) NAC 484.620, 484.630, 484.640, 484.650 are revised to provide for the director's "designee" to perform certain duties associated with the certification, and certificate renewal, of forensic analysts of alcohol and operators of evidential breath testing devices;

- (8) NAC 484.655 is revised to allow a person approved by the forensic analyst of alcohol to teach the course on the operation of preliminary breath-testing devices;
 - (9) NAC 484.665 is revised providing for a forensic analyst of alcohol to perform calibrations on preliminary breath-testing devices;
 - (10) NAC 484.666, 484.667, 484.668, 484.670, 484.680, 484.690, 484.695 are being revised to provide for various "housekeeping" type changes.
- 3. The amendments or changes to the standing regulations will not have an economic effect, either adverse or beneficial, both immediate or long-term on any business.
 - 4. There will be no additional cost to the department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication, as a result of incorporating the proposed amendments to the regulations.
 - 5. The proposed amendments to the regulations do not overlap or duplicate any federal regulation.
 - 6. The proposed amendments to the regulations are not required pursuant to federal law.
 - 7. The proposed amendments do not include provisions which are more stringent than a federal regulation that regulates the same activity.
 - 8. The proposed amendments do not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the department of Motor Vehicles and Public Safety committee on Testing for Intoxication, may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Office of Traffic Safety, department of Motor Vehicles and Public Safety, 555 Wright Way, Carson City NV 89711-0999. Written submissions must be received by the department of Motor Vehicles and Public Safety on or before March 23, 1998. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Motor Vehicles and Public Safety, Committee on Testing for Intoxication, may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed amendments will be on file at the State Library, 100 Stewart Street, Carson city, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the amendments will be available at the Department of Motor Vehicles and Public Safety, 555 Wright Way, Carson City, Nevada, in each of its offices statewide and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will

also be mailed to members of the public, upon request, by calling Liz Reville, Program Assistant, at (702) 687-5720. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Department of Motor Vehicles & Public Safety 555 Wright Way Carson City, Nevada 89711	City of Las Vegas Council Chambers City Hall 400 East Stewart Las Vegas, NV 89101 Fax 388-1807
US Post Office 311 East Washington Carson City, NV 89701	Reno City Council Chambers 490 South Center Street Reno, NV 89501 Fax 334-2097
Nevada State Library 401 North Carson Carson City, NV 89710	Department of Motor Vehicles & Public Safety 973 W. Williams St. Fallon, NV 89406 Fax 423-2797
Washoe County Sheriff's Office 911 Parr Blvd. Reno, NV 89152	Department of Motor Vehicles & Public Safety 8250 W. Flamingo Las Vegas, NV 89117 Fax 4860-8606
Motor Vehicles & Public Safety Drivers License Division 305 Galletti Way Reno, NV 89502 Fax 688-2328	Department of Motor Vehicles & Public Safety 178 Avenue F Ely, NV 89301 Fax 289-1607
Motor Vehicles and Public Safety Drivers License Division 2701 East Sahara Avenue Las Vegas, NV 89104 Fax 486-4291	Department of Motor Vehicles & Public Safety 4021 W. Carey North Las Vegas, NV 89030 Fax 486-5193
Department of Motor Vehicles & Public Safety Drivers License Division 3920 Idaho Street Elko, NV 89801 Fax 738-9856	

Department of Motor Vehicles & Public
Safety
300 Ridgeway Dr.
Tonopah, NV 89049
Fax 623-6508

Department of Motor Vehicles & Public
Safety
3505 Construction Way
Winnemucca, NV 89445
Fax 623-6508

Department of Motor Vehicles & Public
Safety
215 West Bridge St.
Yerington, NV 89447
Fax 463-4046

Department of Motor Vehicles & Public
Safety
1694 County Road
Minden, NV 89423
Fax 782-0202

Goldfield Public Library
Fourth & Crook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street

P.O. Box 293
Eureka, NV 89316

Battle Mountain Branch Library
625 Broad Street
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043
Fax 962-5244

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415
Fax 945-0703

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419
Fax 273-7058

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440
Fax 847-0996

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**PROPOSED REGULATION OF THE
COMMITTEE ON TESTING FOR INTOXICATION**

LCB File No. R112-97

September 16, 1997

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

AUTHORITY: §§ 2 and 8, NRS 50.320; §§ 3-7 and 9-13, NRS 50.315; §§ 14-18, NRS 484.3882; §§ 19-20 and 23-30, NRS 484.3884; §§ 21-22, NRS 484.3886.

Section 1. Chapter 50 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *A declaration of an expert referred to in NRS 50.320 must be substantially in one of the following forms:*

1. If the sample or substance contained a controlled substance as defined in chapter 453 of NRS or a chemical, poison or organic solvent:

I,, hereby declare:

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and identity in the blood or urine of a person of a controlled substance the use or possession of which is regulated by chapter 453 of NRS or a chemical, poison or organic solvent, or the identity of a controlled substance alleged to have been in the possession of a person;

That on (date) I obtained certain evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of for the purpose of performing a chemical analysis on the contents thereof;

That on (date) I analyzed the sample or substance and determined it to be or contain (name of controlled substance, chemical, poison or organic solvent);

That on (date) I replaced the sample or substance in its container and sealed the container with a seal bearing my initials;

That the evidence was in my sole custody or control from the time I obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date)

.....

(Declarant's Signature)

.....

(Declarant's Title)

2. If the sample contained alcohol:

I,, hereby declare:

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and amount of alcohol in the blood or urine of a person;

That on (date) I obtained evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of a sample of (blood or urine);

That on (date) I analyzed the sample and determined that the blood of the person from whom the sample was taken contained (percent) by weight of alcohol;

That on (date) I replaced the sample in its container and sealed the container with a seal bearing my initials

That the evidence was in my sole custody or control from the time I first obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date)

.....

(Declarant's Signature)

.....

(Declarant's Title)

Sec. 3. *A declaration which is referred to in subsection 1 of NRS 50.315 must be in substantially the following form:*

I,, hereby declare:

That I am (occupation) employed by (employer);

That I was certified on (date) by the director of the department of motor vehicles and public safety as being competent to operate a (name of breath-testing device), a device of a type which, as designed and manufactured, has been certified by the committee on testing for intoxication to be accurate and reliable for testing a person's breath to determine the percent by weight of alcohol in his breath;

That on (date) I obtained a sample of the breath of (name of person tested) and tested it in accordance with the prescribed checklist on a (name of device) which was functioning properly; and

That the tests indicated the breath of the person tested contained the following percents by weight of alcohol (grams per 210 liters of breath):

1st test 2nd test 3rd test

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date)

.....

(Declarant's Signature)

.....
(Declarant's Title)

Sec. 4. *A declaration which is referred to in subsection 2 of NRS 50.315 must be in substantially the following form:*

I,, hereby declare:

That I am a (occupation) employed by (employer);

That on (date) I prepared a (chemical solution or gas) consisting of (description and composition of solution or gas) as necessary for accurately calibrating the (name of device).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date)

.....
(Declarant's Signature)

.....
(Declarant's Title)

Sec. 5. *A declaration referred to in subsection 3 of NRS 50.315 must be in substantially the following form:*

I,, hereby declare:

That I am a forensic analyst of alcohol employed by (name of employer);

That I was certified by the director of the department of motor vehicles and public safety on (date) as a person competent to calibrate evidential breath-testing devices;

That on (date) I calibrated a (name of device) bearing serial number which is located at the (name of law enforcement agency) in (city or county), Nevada;

That the (name of device) is certified by the committee on testing for intoxication, as designed and manufactured, to be accurate and reliable for the purpose of testing a person's breath to determine the percent by weight of alcohol in the person's breath (grams per 210 liters of breath);

That the calibration was performed by verifying the response and accuracy of the device, as prescribed in the regulations of the committee on testing for intoxication, by (description of procedure used);

That the calibration was performed within the period required and that the device was otherwise maintained as required by the regulations of the committee on testing for intoxication; and

That upon completion of the calibration the (name and serial number of device) was operating properly.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date)

.....

(Declarant's Signature)

.....
(Declarant's Title)

Sec. 6. *A declaration referred to in subsection 4 of NRS 50.315 must be in substantially the following form:*

I,, hereby declare:

That I am a (occupation) employed by (employer);

That a regular part of my duties is the withdrawing of blood samples from persons and I am authorized to do so by the (name of appropriate licensing or certifying agency);

That on (date) at o'clock ...m., I withdrew a sample of blood in a medically accepted manner from a person known to me as (name); and

That I kept the sample of blood in my sole custody or control and it remained in substantially the same condition as when I first obtained it until on (date) I delivered the sample to (name of person) of the (name of law enforcement agency).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date)

.....
(Declarant's Signature)

.....
(Declarant's Title)

Sec. 7. *A declaration referred to in subsection 5 of NRS 50.315 must be in substantially the following form:*

I,, hereby declare:

That I am a (occupation) employed by (employer);

That on (date) I received from (name of person) certain evidence bearing Identification No. of the (law enforcement agency), consisting of (description of evidence); and

That I kept the evidence in my sole custody or control and in substantially the same condition as when I first received it until on (date) when I delivered the evidence to (name of person).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

(Date)

.....

(Declarant's Signature)

.....

(Declarant's Title)

Sec. 8. NAC 50.010 is hereby amended to read as follows:

50.010 [The] *An* affidavit of an expert referred to in [subsection 1 of NRS 50.315] *NRS 50.320* must be substantially in one of the following forms:

1. If the sample or substance contained a controlled substance as defined in chapter 453 of NRS or a chemical, poison or organic solvent:

State of Nevada

ss.

County of }

I,, being first duly sworn, [**deposes and says:**] *depose and say:*

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and identity in the blood or urine of a person of a controlled substance the use or possession of which is regulated by chapter 453 of NRS or a chemical, poison or organic solvent, or the identity of a controlled substance alleged to have been in the possession of a person;

That on (date) I obtained certain evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of for the purpose of performing a chemical analysis on the contents thereof;

That on (date) I analyzed the sample or substance and determined it to be or contain (name of controlled substance, chemical, poison or organic solvent);

That on (date) I replaced the sample or substance in its container and sealed the container with a seal bearing my initials

That the evidence was in my sole custody or control from the time I obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

.....

[Affiant] *Affiant's Signature*

.....

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19...

.....

Notary Public

2. If the sample contained alcohol:

State of Nevada

ss.

County of }

I,, being first duly sworn, [deposes and says:] *depose and say:*

That I am (occupation) employed by (employer);

That on (date) I first qualified in the District Court of County as an expert witness for the purpose of testifying regarding the presence and amount of alcohol in the blood or urine of a person;

That on (date) I obtained evidence from (person, or evidence vault in sealed container), the evidence bearing Identification No. of (agency) and consisting of a sample of (blood or urine);

That on (date) I analyzed the sample and determined that the blood of the person from whom the sample was taken contained (percent) by weight of alcohol;

That on (date) I replaced the sample in its container and sealed the container with a seal bearing my initials

That the evidence was in my sole custody or control from the time I first obtained it until I resealed its container, at which time it was in substantially the same condition as when I first obtained it; and

That on (date) I returned the evidence to (person or evidence vault) or that I still have the evidence in my possession.

.....

[Affiant] *Affiant's Signature*

.....

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19...

.....

Notary Public

Sec. 9. NAC 50.020 is hereby amended to read as follows:

50.020 [The] *An* affidavit which is referred to in subsection [2] *I* of NRS 50.315 must be in substantially the following form:

State of Nevada

ss.

County of }

I,, being first duly sworn, depose and say:

That I am (occupation) employed by (employer);

That I was certified on (date) by the director of the department of motor vehicles *and public safety* as being competent to operate a (name of breath-testing device), a device of a type which, as designed and manufactured, has been certified by the committee on testing for intoxication to be accurate and reliable for testing a person's breath to determine the percent by weight of alcohol in his breath;

That on (date) I obtained a sample of the breath of (name of person tested) and tested it in accordance with the prescribed checklist on a (name of device) which was functioning properly; and

That the tests indicated the breath of the person tested contained the following percents by weight of alcohol [:] (*grams per 210 liters of breath*):

1st test

2nd test

3rd test

.....

[Affiant] *Affiant's Signature*

.....

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19...

.....

Notary Public

Sec. 10. NAC 50.030 is hereby amended to read as follows:

50.030 [The] *An* affidavit which is referred to in subsection [3] 2 of NRS 50.315 must be in substantially the following form:

State of Nevada

ss.

County of }

I,, being first duly sworn, [**deposes and says:**] *depose and say:*

That I am a (occupation) employed by (employer);

That on (date) I prepared a (chemical solution or gas) consisting of
..... (description and composition of solution or gas) as necessary for accurately
calibrating the (name of device).

I do hereby swear under penalty of perjury that the assertions of this affidavit are true.

.....

[**Affiant**] *Affiant's Signature*

.....

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19...

.....

Notary Public

Sec. 11. NAC 50.040 is hereby amended to read as follows:

50.040 [The] An affidavit referred to in subsection [4] 3 of NRS 50.315 must be in substantially the following form:

State of Nevada

ss.

County of }

I,, being first duly sworn, [deposes and says:] *depose and say:*

That I am a forensic analyst of alcohol employed by (name of employer);

That I was certified by the director of the department of motor vehicles *and public safety* on (date) as a person competent to calibrate evidential breath-testing devices;

That on (date) I calibrated a (name of device) bearing serial number which is located at the (name of law enforcement agency) in (city or county), Nevada;

That the (name of device) is certified by the committee on testing for intoxication, as designed and manufactured, to be accurate and reliable for the purpose of testing a person's breath to determine the percent by weight of alcohol in the person's breath [;] (*grams per 210 liters of breath*);

That the calibration was performed by verifying the response and accuracy of the device, as prescribed in the regulations of the committee on testing for intoxication, by (description of procedure used);

That the calibration was performed within the period required and that the device was otherwise maintained as required by the regulations of the committee on testing for intoxication; and

That upon completion of the calibration the (name and serial number of device) was operating properly.

.....

[Affiant] *Affiant's Signature*

.....

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19...

.....

Notary Public

Sec. 12. NAC 50.050 is hereby amended to read as follows:

50.050 [The] *An* affidavit referred to in subsection [5] *4* of NRS 50.315 must be in substantially the following form:

State of Nevada

ss.

County of }

I,, being first duly sworn, [**deposes and says:**] *depose and say:*

That I am a (occupation) employed by (employer);

That a regular part of my duties is the withdrawing of blood samples from persons and I am authorized to do so by the (name of appropriate licensing or certifying agency);

That on (date) at o'clock ...m., I withdrew a sample of blood in a medically accepted manner from a person known to me as (name); and

That I kept the sample of blood in my sole custody or control and it remained in substantially the same condition as when I first obtained it until on (date) I delivered the sample to (name of person) of the (name of law enforcement agency).

I do hereby swear under penalty of perjury that the assertions of this affidavit are true.

.....

[**Affiant**] *Affiant's Signature*

.....

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19...

.....

Notary Public

Sec. 13. NAC 50.060 is hereby amended to read as follows:

50.060 [The] *An* affidavit referred to in subsection [6] *5* of NRS 50.315 must be in substantially the following form:

State of Nevada

ss.

County of }

I,, being first duly sworn, [deposes and says:] *depose and say:*

That I am a (occupation) employed by (employer);

That on (date) I received from (name of person) certain evidence bearing Identification No. of the (law enforcement agency), consisting of (description of evidence); and

That I kept the evidence in my sole custody or control and in substantially the same condition as when I first received it until on (date) when I delivered the evidence to (name of person).

.....

[Affiant] *Affiant's Signature*

.....

Affiant's Title

Subscribed and sworn to before me this

..... day of, 19...

.....

Notary Public

Sec. 14. NAC 484.590 is hereby amended to read as follows:

484.590 As used in NAC 484.590 to [484.695,] 484.690, inclusive, unless the context otherwise requires:

1. “Committee” means the committee on testing for intoxication.
2. The phrase “device that prevents an intoxicated person from starting a vehicle” has the meaning ascribed to the term “device” in NRS 484.3941.
3. “Director” means the director of the department of motor vehicles and public safety.

Sec. 15. NAC 484.605 is hereby amended to read as follows:

484.605 The following preliminary breath-testing devices are approved and certified as being designed and manufactured to be accurate and reliable to determine the percent by weight of alcohol in a person’s breath when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where he stops a vehicle:

1. Alcosensor pass-suspect-fail model, manufactured by Intoximeters, Inc.
2. Alcosensor III, digital, manufactured by Intoximeters, Inc.
3. Alcosensor IV, manufactured by Intoximeters, Inc.
4. A.L.E.R.T. J-4 digifail model, manufactured by Alcohol Countermeasure Systems.

5. A.L.E.R.T. J-4 pass-suspect-fail model, manufactured by Alcohol Countermeasure Systems.
6. A.L.E.R.T. J-4X software version 1.83, hardware revision 7, manufactured by Alcohol Countermeasure Systems.
7. Intoxilyzer 1400, manufactured by CMI, Inc.
8. SD-2, manufactured by CMI, Inc.
9. RBT IV, manufactured by Intoximeters, Inc.
10. PBA 3000, manufactured by LIFE-LOC, Inc.
11. *Breathalyzer 7410, manufactured by Draeger.*

Sec. 16. NAC 484.607 is hereby amended to read as follows:

484.607 The [INTOXALOCK, manufactured by Consumer Safety Technology, Inc., is] *following devices are* approved and certified as being designed and manufactured to be accurate and reliable to determine the percent by weight of alcohol in a person's breath when the test is taken to prevent an intoxicated person from starting a vehicle [.] :

1. *Intoxalock, manufactured by Consumer Safety Technology, Inc.*
2. *Draeger Interlock, manufactured by Draeger.*

Sec. 17. NAC 484.610 is hereby amended to read as follows:

484.610 1. Upon receipt of a petition from any interested person to make an addition to or deletion from the list of certified evidential breath-testing devices in NAC 484.600, the director of the department of motor vehicles and public safety *or his designee* shall examine the petition on behalf of the committee on testing for intoxication.

2. If the director *or his designee* finds that the device named in the petition is:

(a) On the list of qualified products meeting the requirements of the National Highway Traffic Safety Administration, or has been deleted from that list, and that cause otherwise exists, he may:

- (1) Place the petition on the agenda for the committee's next regularly scheduled meeting; or
- (2) Order that the device be evaluated pursuant to subsection 4.

(b) Not on the list of qualified products of the National Highway Traffic Safety Administration or that cause does not exist for the committee to consider the petition, he shall, within 30 days after receiving the petition, deny the petition in writing, stating his reasons.

3. A person who is aggrieved by the denial of such a petition by the director *or his designee* may appeal in writing to the committee.

4. If a breath-testing device is to be evaluated, the director *or his designee* shall arrange for two fully equipped devices to be made available to a forensic laboratory designated by him. The designated laboratory must have on its staff at least one certified forensic analyst of alcohol, who shall evaluate the device in accordance with established scientific methods and principles and determine whether the device, as designed and manufactured, is accurate and reliable for the purpose of testing a person's breath to determine the percent by weight of alcohol in the person's breath.

Sec. 18. NAC 484.615 is hereby amended to read as follows:

484.615 1. Upon receipt of a petition from any interested person to make an addition to or deletion from the list of preliminary breath-testing devices in NAC 484.605, the director of the department of motor vehicles and public safety *or his designee* shall examine the petition on behalf of the committee on testing for intoxication.

2. The director *or his designee* may:

- (a) Place the petition on the agenda for the committee's next regularly scheduled meeting;
- (b) Order that the device be evaluated pursuant to subsection 4; or
- (c) Deny the petition.

3. A person who is aggrieved by the denial of such a petition by the director *or his designee* may appeal in writing to the committee.

4. If a breath-testing device is to be evaluated, the director or his [agent] *designee* shall arrange for two of the fully equipped devices to be made available to a laboratory designated by him. The designated laboratory must have on its staff at least one certified forensic analyst of alcohol, who shall evaluate the device in accordance with established scientific methods and principles and determine whether the device, as designed and manufactured, is accurate and reliable to test a person's breath to determine the percent by weight of alcohol in the person's breath when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where he stops a vehicle.

Sec. 19. NAC 484.620 is hereby amended to read as follows:

484.620 1. A person must apply to the director of the department of motor vehicles and public safety *or his designee* on a form furnished by the department for certification as a forensic analyst of alcohol.

2. The director *or his designee* shall certify as a forensic analyst of alcohol each applicant who:

- (a) Possesses a baccalaureate degree in a natural, physical or forensic science;
- (b) Has completed a minimum of 24 semester hours in the study of chemistry at an accredited college or university;

(c) Has successfully completed a course which has been approved by the committee on testing for intoxication and consisted of at least 24 hours of instruction on the design, calibration and operation of the kind of breath-testing devices that he will be calibrating or teaching others to operate; and

(d) Demonstrates his competence in calibrating breath- testing devices and in evaluating others on their competence in operating those devices.

3. Certification as a forensic analyst of alcohol is valid for 2 years after the date of certification.

Sec. 20. NAC 484.630 is hereby amended to read as follows:

484.630 The director of the department of motor vehicles and public safety *or his designee* shall renew the certificate of any person certified by him as a forensic analyst of alcohol who applies in writing to the director for a renewal before the certificate expires and:

1. Successfully completes a course approved by the committee on testing for intoxication, consisting of at least 8 hours of instruction on the subjects taught in the basic course described in paragraph (c) of subsection 2 of NAC 484.620 and demonstrates his competence in calibrating breath-testing devices and in evaluating others on their competence in operating such devices; or

2. Submits to him the following documents:

(a) A current resume of his education and other qualifications.

(b) Verification of attendance at no less than two seminars or training programs related to the influence of alcohol on drivers. The verification must include the dates of attendance, the names of the instructors and speakers, and a general description of the curriculum.

(c) Proof of acceptance as an expert in the field of [testing breath for alcoholic content] *breath alcohol testing* in no less than four courts of law. The proof must include the names of the courts, date of acceptance and the names of the cases for which he was accepted as an expert.

(d) Verification of continued activity in the field of [testing breath for alcoholic content] *breath alcohol testing* since his previous certification.

Sec. 21. NAC 484.640 is hereby amended to read as follows:

484.640 1. A person or his employer must apply to the [director of the] department of motor vehicles and public safety on a form furnished by the department for certification of the person as an operator of an evidential breath-testing device.

2. The director or his designee shall certify as an operator of an evidential breath-testing device each applicant who has successfully completed a course consisting of at least 4 hours of instruction on the subject of the operation of devices for testing a person's breath to determine the percent by weight of alcohol in his breath which has been approved by the peace officers' standards and training committee. Such a course must be taught by a certified forensic analyst of alcohol and must include instruction on and a determination of the applicant's proficiency in the operation of the specific devices for which certification is granted.

3. The director or his designee shall certify as an operator of an additional evidential breath-testing device each applicant who:

- (a) Holds a current certification as an operator of an evidentiary breath-testing device; and
- (b) Has successfully completed a course consisting of at least 2 hours of instruction on the subject of the operation of the device for testing a person's breath to determine the percent by weight of alcohol in his breath which has been approved by the peace officer's standards and training committee. The course must be taught by a certified forensic analyst of alcohol and must

include instruction on and a determination of the applicant's proficiency in the operation of the specific device for which certification is granted.

4. The certificate issued by the director or his designee must specify by manufacturer and model the evidential breath-testing devices which the applicant has been certified to operate.

5. Certification as an operator of an evidential breath- testing device is valid for 3 years after the date of the certification.

Sec. 22. NAC 484.655 is hereby amended to read as follows:

484.655 1. Before operating a preliminary breath-testing device, the operator of a preliminary breath-testing device must satisfactorily complete a course on the operation of the instrument.

2. The instructor of the course must be a forensic analyst of alcohol, a manufacturer's representative or a person approved by [the committee.] *a forensic analyst of alcohol.*

3. The course must meet the manufacturer's requirements for instruction in the proper operation of the preliminary breath-testing device and be approved by the committee.

Sec. 23. NAC 484.665 is hereby amended to read as follows:

484.665 1. Each preliminary breath-testing device used by a law enforcement agency must be calibrated by the agency *or a certified forensic analyst of alcohol* at least once a year.

2. The calibration must include:

(a) Verification by the agency *or certified forensic analyst of alcohol* of the response and accuracy of the device at no less than three levels of alcohol [, using an appropriate certified alcohol standard,] within the range which corresponds to percentage by weight of alcohol in the breath from 0 to 0.4 percent, inclusive; and

(b) The response of the device to breath samples which do not contain alcohol.

3. In order to be used, a preliminary breath-testing device must also be tested for accuracy each month using a certified alcohol standard for calibration.

Sec. 24. NAC 484.666 is hereby amended to read as follows:

484.666 1. Each device that prevents an intoxicated person from starting a vehicle must be calibrated, tested and examined by the manufacturer or his agent at least once every 90 days.

2. The calibration must include:

(a) Verification by the manufacturer *or agent* of the response and accuracy of the device at no less than two levels of alcohol [, using an appropriate certified standard alcohol solution] within the range that corresponds to percentage by weight of alcohol in the breath of [0.05] 0.02 to 0.10 percent, inclusive. The accuracy of the device must be within 10 percent of the [value of the certified standard alcohol solution for each level.] *known alcohol levels.*

(b) The response of the device to breath samples that do not contain alcohol.

(c) Verification that the device prevents the motor vehicle in which it is installed from starting if [the results of the test of a person's breath indicate that the person has] a breath alcohol level of [0.05] 0.02 percent or more [.] *is detected.*

3. If any evidence of tampering with the device is found, the device must not be used.

Sec. 25. NAC 484.667 is hereby amended to read as follows:

484.667 1. Each person who calibrates , *maintains or repairs* a preliminary breath-testing device shall enter, at or near the time of the activity, the following information on a form approved by the committee:

(a) Whether the calibration is done monthly or annually;

(b) The date and time of the calibration;

(c) The name of the person performing the calibration; and

(d) The response and accuracy of the device for each test which is performed.

(e) The nature and extent of maintenance or repair performed on the device.

2. The form must be retained by the agency.

Sec. 26. NAC 484.668 is hereby amended to read as follows:

484.668 1. The manufacturer or [his] *its* agent who calibrates, maintains or repairs a device that prevents an intoxicated person from starting a vehicle shall enter, at or near the time of the activity, the following information on a form approved by the committee:

(a) For calibration of the device, the information must include:

(1) The date and time of the calibration;

(2) The name of the [manufacturer and analyst] *person* performing the calibration;

(3) The response and accuracy of the device for each test that is performed;

(4) Verification that the device prevents the motor vehicle in which it is installed from starting [is the results of the test of a person's breath indicate that the person has] *if* a breath alcohol level of [0.05] *0.02* percent or more [;] *is detected*; and

(5) The nature and extent of [any] maintenance or repair performed on the device.

(b) For maintenance or repair of the device, the information must include:

(1) The date and time of the maintenance or repair;

(2) The name of the [manufacturer and analyst] *person* performing the maintenance or repair;

and

(3) The nature and extent of [the] maintenance or repair [.] *performed on the device.*

2. The manufacturer or [his] *its* agent shall [submit] *retain* the form *and make it available upon request* to the director [and any report of tampering within 5 days after calibrating, maintaining or repairing a device.] *or his designee.*

Sec. 27. NAC 484.670 is hereby amended to read as follows:

484.670 A certified operator of an evidential breath-testing device:

1. In the ordinary course of his business and at the time he is performing a test of a person's breath, shall use, follow the instructions in, and enter the appropriate information on the Checklist for Operators of Breath-Testing Devices which is [prepared by the director of the department of motor vehicles and public safety] *approved by the committee on testing for intoxication* for use with the specific type of device that he is operating.
2. Immediately before performing the evidentiary test of the person's breath, shall verify the calibration of the device by testing it using an aqueous solution which is certified to contain a specific concentration of alcohol within the range that corresponds to percentage by weight of alcohol in the breath from .05 to .20 percent, inclusive.

Sec. 28. NAC 484.680 is hereby amended to read as follows:

484.680 1. Each law enforcement agency which uses an evidential breath-esting device shall keep in the ordinary course of its business a chronological record for each device.

2. The operator [,] *or* forensic analyst of alcohol [or person who maintains or repairs the device] shall enter into the record, at or near the time of his activity, for the:

- (a) Test of a person's breath on the device:
 - (1) The name of the person tested;
 - (2) The date and time of the test;
 - (3) The name of the operator of the device;
 - (4) The result of the test to verify the calibration of the device; and
 - (5) The result of the test of the person's breath.
- (b) Calibration of the device:

- (1) The date and time of the calibration;
- (2) The name of the forensic analyst of alcohol who performs the calibration; *and*
- (3) The response and accuracy of the device for each test which is performed . [*; and*
- (4) *The nature and extent of any maintenance or repair which is performed on the device.*]

(c) Maintenance or repair of the device:

- (1) The date and time of the maintenance or repair;
- (2) The name of the person performing the maintenance or repair; and
- (3) The nature and extent of the maintenance or repair.

Sec. 29. NAC 484.690 is hereby amended to read as follows:

484.690 1. Each forensic analyst of alcohol who calibrates *or repairs* evidential breath-testing devices shall keep in the ordinary course of his business a chronological record for each device upon which he performs calibrations [*.*] *or repairs*.

2. The analyst shall enter into his record, at or near the time he calibrates a device:

- (a) The date and time of the calibration;
- (b) The analyst's name;
- (c) The response and accuracy of the device for each test of calibration which is performed;

and

- (d) The nature and extent of any [*maintenance or*] repair which he performs on the device.

Sec. 30. NAC 484.695 is hereby repealed.

TEXT OF REPEALED SECTION

484.695 Preliminary breath-testing device: Records of forensic analyst of alcohol. Each forensic analyst of alcohol who calibrates preliminary breath-testing devices shall keep a chronological record for each device upon which he performs calibrations. The record must include:

1. The date and time of the calibration;
 2. The analyst's name;
 3. The response and accuracy of the device for each test of calibration which is performed;
- and
4. The nature and extent of any maintenance or repair which is performed on the device.