

LCB File No. 193-97
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
555 Wright Way
Carson City, Nevada 89711

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

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

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

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

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

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

LCB File No. R193-97

January 29, 1998

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

AUTHORITY: §§1 and 2, NRS 484.3947.

Section 1. NAC 484.617 is hereby amended to read as follows:

484.617 1. Upon receipt of a petition from any interested person to make an addition to or a deletion from the list of devices that prevent an intoxicated person from starting a vehicle, the director *or his agent* shall examine the petition on behalf of the committee.

2. The director *or his agent* may:

(a) Place the petition on the agenda for the next regularly scheduled meeting of the committee;

(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 a petition may appeal in writing to the committee.

4. If a device is to be evaluated, the director *or his agent* shall arrange for two of the 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 to determine the concentration of alcohol in the person's breath.

Sec. 2. 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 his 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] *a concentration* of alcohol in the breath of [0.05] *0.02* to 0.10 [percent, inclusive.] *grams, inclusive, of alcohol per 210 liters of breath.* The accuracy of the device must be within 10 percent of the value of the [certified] standard alcohol solution for each level.

(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 percent or more.] *the concentration of alcohol in a person's breath is equal to or greater than 0.02 grams of alcohol per 210 liters of breath.*

3. *Each device must meet the following requirements established by the committee:*

(a) Ability to sample a minimum volume of expired breath that is required to test a person's breath;

(b) Ability to test a minimum concentration of alcohol in the breath that is required to prevent the motor vehicle from starting and a minimum concentration of alcohol in the breath that is required for subsequent tests of the person's breath while the person is driving the motor vehicle;

(c) Requirements for calibrating a device before installation;

(d) Options for restricting the hours of operation of the vehicle;

(e) The frequency with which the device will require a person's breath to be tested while driving the motor vehicle; and

(f) The ability of the device to prevent a person who has the device installed in his motor vehicle from starting the vehicle if the person:

(1) Fails to submit the device for a mandatory calibration;

(2) Tamper with the device; or

(3) Receives a result on the test of his breath that is at or above a prohibited level.

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