

SENATE BILL NO. 40—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

(ON BEHALF OF THE HEALTH DIVISION)

PREFILED DECEMBER 20, 2012

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to medical laboratories.
(BDR 54-314)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 medical laboratories; revising provisions governing the application for the licensing of a medical laboratory; revising the requirements to qualify for certification as an assistant in a medical laboratory; increasing the maximum amount of administrative penalties that may be imposed for violations of provisions governing medical laboratories; making various other changes relating to medical laboratories; requiring the State Board of Health to adopt certain regulations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, an application for the licensing of a medical laboratory is
2 required to be made under oath on a form prescribed by the Health Division of the
3 Department of Health and Human Services and must contain certain other
4 information. (NRS 652.090) **Section 1** of this bill eliminates the requirement that
5 applications for the licensing of a medical laboratory be made under oath and adds
6 the requirement that these applications include the proof of identity of the
7 laboratory director.

8 Under existing law, to qualify for certification as an assistant in a medical
9 laboratory, a person is required to be a high school graduate or have a general
10 equivalency diploma and is required to either complete 6 months of approved
11 training and demonstrate an ability to perform laboratory procedures or complete a
12 course of instruction that qualifies him or her to take and pass an examination for
13 certification in phlebotomy. (NRS 652.127) **Section 3** of this bill instead requires
14 that, to qualify for certification as an assistant in a medical laboratory, a person



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15 must meet the qualifications established by regulations adopted by the State Board
16 of Health.

17 Existing law authorizes certain licensed medical professionals to perform any
18 laboratory test which is classified as a waived test pursuant to Subpart A of Part
19 493 of Title 42 of the Code of Federal Regulations. **Sections 4 and 5** of this bill
20 clarify that those licensed medical professionals may perform such waived tests
21 without obtaining certification as an assistant in a medical laboratory.

22 Under existing law, any person or laboratory violating any of the provisions
23 governing medical laboratories is required to pay a fine ranging from \$250 to \$500
24 for each violation. (NRS 652.260) **Section 6** of this bill authorizes the Health
25 Division to impose an administrative penalty not to exceed \$10,000 for each
26 violation and provides criteria for determining the amount of the administrative
27 penalty to be imposed for a violation. **Section 6** also authorizes the Health Division
28 to require any person or medical laboratory that violates the provisions governing
29 medical laboratories to take any action necessary to correct the violation.

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

1 **Section 1.** NRS 652.090 is hereby amended to read as follows:
2 652.090 **1.** An application for a license must be ~~made under~~
3 ~~oath~~ on a form prescribed by the Health Division and must contain
4 the following information:

5 ~~1-1~~ **(a)** The name and location of the laboratory;
6 ~~1-2~~ **(b)** The name *and proof of identity* of the laboratory
7 director;

8 ~~1-3~~ **(c)** The name of the owner or owners of the laboratory or, if
9 a corporation, the names of the officers, directors and beneficial
10 owners of 10 percent or more of its shares;

11 ~~1-4~~ **(d)** A description of the program and services provided by
12 the laboratory; and

13 ~~1-5~~ **(e)** Such other information as the Health Division may
14 deem necessary or expedient to carry out its powers and duties
15 under this chapter.

16 **2.** *The Board shall adopt regulations to carry out the*
17 *provisions of subsection 1, including, without limitation,*
18 *regulations setting forth the acceptable forms of proof of identity*
19 *that a laboratory director must include in an application pursuant*
20 *to paragraph (b) of subsection 1.*

21 **Sec. 2.** NRS 652.123 is hereby amended to read as follows:
22 652.123 Regulations adopted by the Board pursuant to this
23 chapter may not be more stringent than the provisions of Part 493 of
24 Title 42 of the Code of Federal Regulations, except that the Board
25 may adopt regulations which are more stringent relating to:

26 1. Any laboratory test, other than a test for the detection of the
27 human immunodeficiency virus, classified as a waived test pursuant



1 to the provisions of Part 493 of Title 42 of the Code of Federal
2 Regulations; ~~and~~

3 2. The qualifications and duties of the personnel of a medical
4 laboratory ~~;~~; and

5 3. *The administrative penalties that may be imposed for*
6 *violating any of the provisions of this chapter or regulations*
7 *adopted pursuant thereto.*

8 **Sec. 3.** NRS 652.127 is hereby amended to read as follows:

9 652.127 1. To qualify for certification as an assistant in a
10 medical laboratory, a person must ~~be a high school graduate or~~
11 ~~have a general equivalency diploma and:~~

12 ~~— 1. Must complete at least 6 months of training approved by the~~
13 ~~Board and demonstrate an ability to perform laboratory procedures~~
14 ~~in the medical laboratory where he or she receives the training; or~~

15 ~~— 2. Must:~~

16 ~~— (a) Complete a course of instruction that qualifies him or her to~~
17 ~~take an examination for certification in phlebotomy that is~~
18 ~~administered by:~~

19 ~~— (1) The American Medical Technologists;~~

20 ~~— (2) The American Society of Clinical Pathologists; or~~

21 ~~— (3) The National Certification Agency; and~~

22 ~~— (b) Pass an examination specified in paragraph (a).]~~ *meet the*
23 *qualifications established by the Board by regulation.*

24 2. *The Board shall adopt such regulations as necessary to*
25 *carry out the provisions of this section.*

26 **Sec. 4.** NRS 652.210 is hereby amended to read as follows:

27 652.210 1. Except as otherwise provided in subsection 2 and
28 NRS 126.121, no person other than a licensed physician, a licensed
29 optometrist, a licensed practical nurse, a registered nurse, a
30 perfusionist, a physician assistant licensed pursuant to chapter 630
31 or 633 of NRS, a certified intermediate emergency medical
32 technician, a certified advanced emergency medical technician, a
33 practitioner of respiratory care licensed pursuant to chapter 630 of
34 NRS or a licensed dentist may manipulate a person for the collection
35 of specimens. *The persons described in this subsection may*
36 *perform any laboratory test which is classified as a waived test*
37 *pursuant to Subpart A of Part 493 of Title 42 of the Code of*
38 *Federal Regulations without obtaining certification as an assistant*
39 *in a medical laboratory pursuant to NRS 652.127.*

40 2. The technical personnel of a laboratory may collect blood,
41 remove stomach contents, perform certain diagnostic skin tests or
42 field blood tests or collect material for smears and cultures.

43 **Sec. 5.** NRS 652.217 is hereby amended to read as follows:

44 652.217 1. A licensed nurse who is employed by a medical
45 facility which is licensed pursuant to chapter 449 of NRS may



1 perform any laboratory test which is classified as a waived test
2 pursuant to Subpart A of Part 493 of Title 42 of the Code of Federal
3 Regulations if the laboratory director or a person designated by the
4 laboratory director:

- 5 (a) Verifies that the nurse is competent to perform the test;
- 6 (b) Ensures that the test is performed in accordance with any
7 manufacturer's instructions; and
- 8 (c) Validates and verifies the manner in which the test is
9 performed through the use of controls which ensure accurate and
10 reliable results of the test.

11 2. *A licensed nurse described in subsection 1 may perform
12 any laboratory test which is classified a waived test pursuant to
13 Subpart A of Part 493 of Title 42 of the Code of Federal
14 Regulations without obtaining certification as an assistant in a
15 medical laboratory pursuant to NRS 652.127.*

16 3. Licensed or certified personnel of a laboratory licensed
17 pursuant to this chapter may perform any laboratory test which is
18 classified as a waived test pursuant to Subpart A of Part 493 of Title
19 42 of the Code of Federal Regulations on the premises of an
20 outpatient center of the laboratory or at a patient's residence if the
21 laboratory director or a person designated by the laboratory director:

- 22 (a) Verifies that the person is competent to perform the test;
- 23 (b) Ensures that the test is performed in accordance with any
24 manufacturer's instructions;
- 25 (c) Validates and verifies the manner in which the test is
26 performed through the use of controls which ensure accurate and
27 reliable results of the test; and
- 28 (d) Ensures compliance with any requirements for safety
29 adopted by the Board.

30 **Sec. 6.** NRS 652.260 is hereby amended to read as follows:

31 652.260 ~~Any~~

32 1. *If a person or laboratory ~~violating~~ violates any of the
33 provisions of this chapter ~~shall be punished by a fine~~ or the
34 regulations adopted pursuant thereto, the Health Division may,
35 after giving notice and opportunity to be heard:*

36 (a) *Impose an administrative penalty of not more than ~~\$250~~
37 ~~for the first offense and not more than \$500 for any subsequent~~
38 ~~offense.~~ \$10,000; and*

39 (b) *Require the person or laboratory to take any action
40 necessary to correct the violation.*

41 2. Each act in violation of this chapter *or the regulations*
42 *adopted pursuant thereto* constitutes a separate offense.

43 3. *In determining the amount of an administrative penalty to
44 be imposed pursuant to this section, the Health Division shall
45 consider:*



- 1 (a) *The severity of the violation, including, without limitation:*
2 (1) *The probability that death or serious harm to the health*
3 *or safety of a person may occur as a result of the violation;*
4 (2) *The severity of the potential or actual harm that may*
5 *occur to any person as a result of the violation; and*
6 (3) *The extent to which the provisions of this chapter or the*
7 *regulations adopted pursuant thereto were violated;*
8 (b) *Whether the person or laboratory has previously violated*
9 *the provisions of this chapter or the regulations adopted pursuant*
10 *thereto; and*
11 (c) *Any other facts or circumstances that the Health Division*
12 *determines are relevant.*
13 4. *If the person or laboratory fails to pay the administrative*
14 *penalty imposed pursuant to this section after the time for an*
15 *appeal has expired, the Health Division may:*
16 (a) *Suspend the license of the person or laboratory;*
17 (b) *Impose interest on the unpaid administrative penalty at a*
18 *rate of 10 percent from the date on which the time for an appeal*
19 *expired until the date the administrative penalty is paid; and*
20 (c) *Collect court costs, reasonable attorney's fees, the costs of*
21 *an investigation and other costs incurred to collect the*
22 *administrative penalty.*
23 5. *Except as otherwise provided in this section, all money*
24 *collected from administrative penalties imposed pursuant to this*
25 *section must be deposited in the State General Fund.*
26 6. *The money collected from such administrative penalties*
27 *may be accounted for separately and used by the Health Division*
28 *to administer and carry out the provisions of this chapter and to*
29 *protect the health, safety and well-being of patients in accordance*
30 *with applicable state and federal standards if:*
31 (a) *The person or laboratory pays the administrative penalty*
32 *without exercising the right to a hearing to contest the penalty; or*
33 (b) *The administrative penalty is imposed in a hearing*
34 *conducted by a hearing officer or panel appointed by the Health*
35 *Division.*
36 7. *The Health Division may appoint one or more hearing*
37 *officers or panels and may delegate to those hearing officers or*
38 *panels the power of the Health Division to conduct hearings,*
39 *determine violations and impose the administrative penalties*
40 *authorized by this section.*
41 8. *If money collected from an administrative penalty is*
42 *deposited in the State General Fund, the Health Division may*
43 *present a claim to the State Board of Examiners for*
44 *recommendation to the Interim Finance Committee if money is*
45 *needed to pay court costs, attorney's fees, the costs of an*



1 *investigation or other costs incurred to collect the administrative*
2 *penalty.*

3 **9. The Board may adopt regulations to carry out the**
4 **provisions of this section.**

5 **Sec. 7.** NRS 484C.250 is hereby amended to read as follows:

6 484C.250 1. The results of any blood test administered under
7 the provisions of NRS 484C.160 or 484C.180 are not admissible in
8 any hearing or criminal action arising out of acts alleged to have
9 been committed by a person who was driving or in actual physical
10 control of a vehicle while under the influence of intoxicating liquor
11 or a controlled substance or who was engaging in any other conduct
12 prohibited by NRS 484C.110, 484C.120, 484C.130 or 484C.430
13 unless:

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

16 (1) Is a physician, physician assistant licensed pursuant to
17 chapter 630 or 633 of NRS, registered nurse, licensed practical
18 nurse, emergency medical technician or a phlebotomist, technician,
19 technologist or assistant employed in a 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 ~~described in subsection 2 of NRS~~
25 ~~652.127;~~ *that qualifies him or her to take an examination in*
26 *phlebotomy that is administered by the American Medical*
27 *Technologists or the American Society for Clinical 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 police officer or the person to be tested to
37 administer the test.

38 **Sec. 8.** NRS 488.500 is hereby amended to read as follows:

39 488.500 1. The results of any blood test administered under
40 the provisions of NRS 488.460 or 488.490 are not admissible in any
41 criminal action arising out of acts alleged to have been committed
42 by a person who was operating or in actual physical control of a
43 vessel under power or sail while under the influence of intoxicating
44 liquor or a controlled substance or who was engaging in any other
45 conduct prohibited by NRS 488.410, 488.420 or 488.425 unless:



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

3 (1) Is a physician, registered nurse, licensed practical nurse,
4 emergency medical technician or a phlebotomist, technician,
5 technologist or assistant employed in a medical laboratory; or

6 (2) Has special knowledge, skill, experience, training and
7 education in withdrawing blood in a medically acceptable manner,
8 including, without limitation, a person qualified as an expert on that
9 subject in a court of competent jurisdiction or a person who has
10 completed a course of instruction ~~described in subsection 2 of NRS~~
11 ~~652.127;~~ *that qualifies him or her to take an examination in*
12 *phlebotomy that is administered by the American Medical*
13 *Technologists or the American Society for Clinical Pathology;* and

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

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

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

24 **Sec. 9.** The amendatory provisions of section 3 of this act do
25 not apply to a person who has obtained certification as an assistant
26 in a medical laboratory before January 1, 2014.

27 **Sec. 10.** This act becomes effective:

28 1. Upon passage and approval for the purposes of adopting
29 regulations and performing any other preparatory administrative
30 tasks that are necessary to carry out the provisions of this act; and

31 2. On January 1, 2014, for all other purposes.

