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SENATE BILL NO. 433—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DISTRICT ATTORNEY’S ASSOCIATION)

MARCH 24, 2003

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing admissibility of certain evidence. (BDR 4-427)

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.

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AN ACT relating to evidence; allowing certain witnesses to submit into evidence laboratory reports in lieu of personal testimony; expanding the purpose for which certain evidence is admissible; and providing other matters properly relating thereto.

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

- 1     **Section 1.** NRS 50.310 is hereby amended to read as follows:  
2     50.310 1. The affidavit , *report* or declaration of a laboratory  
3 director who has qualified in the district court of any county as an  
4 expert witness to testify regarding the results of a test of a medical  
5 laboratory is admissible in evidence in any civil, criminal or  
6 administrative proceeding to prove:  
7     (a) That the affiant , *person who signed the report* or declarant  
8 is a laboratory director.  
9     (b) The results of a test that the medical laboratory is licensed to  
10 conduct and which is conducted by the medical laboratory of which  
11 the affiant , *person who signed the report* or declarant is the  
12 laboratory director.  
13 The affidavit , *report* or declaration must contain the evidentiary  
14 foundation upon which the results of the test are based, including  
15 the description of the test, the personnel involved and the controls



1 employed in conducting the test. *If the report is a single report*  
2 *containing the combined reports of persons described in*  
3 *subsections 1 to 5, inclusive, of NRS 50.315 or subsection 1 of*  
4 *NRS 50.320, each report from such a person must be signed by*  
5 *that person and the single report must be signed by the laboratory*  
6 *director.*

7 2. As used in this section:  
8 (a) "Laboratory director" has the meaning ascribed to it in  
9 NRS 652.050.  
10 (b) "Medical laboratory" has the meaning ascribed to it in  
11 NRS 652.060.

12 **Sec. 2.** NRS 50.315 is hereby amended to read as follows:  
13 50.315 1. Except as otherwise provided in subsections ~~[6 and~~  
14 ~~7.] 7 and 8,~~ the affidavit, *report* or declaration of a person *who tests*  
15 *another's breath to determine the presence or concentration of*  
16 *alcohol* is admissible in evidence in any criminal or administrative  
17 proceeding to prove ~~[-~~  
18 ~~—(a) That the affiant or declarant has been certified by the~~  
19 ~~Director of the Department of Public Safety as being competent to~~  
20 ~~operate devices of a type certified by the Committee on Testing for~~  
21 ~~Intoxication as accurate and reliable for testing a person's breath to~~  
22 ~~determine the concentration of alcohol in his breath;~~  
23 ~~—(b) The identity of a person from whom the affiant or declarant~~  
24 ~~obtained a sample of breath; and~~  
25 ~~—(c) That the affiant or declarant tested the sample using a device~~  
26 ~~of a type so certified and that the device was functioning properly.]~~  
27 *any fact relevant to the testing of another's breath to determine*  
28 *the presence or concentration of alcohol.*

29 2. Except as otherwise provided in subsections ~~[6 and 7.] 7 and~~  
30 ~~8,~~ the affidavit, *report* or declaration of a person who prepared a  
31 chemical solution or gas that has been used in calibrating a device  
32 for testing another's breath to determine the concentration of alcohol  
33 in his breath is admissible in evidence in any criminal or  
34 administrative proceeding to prove ~~[-~~  
35 ~~—(a) The occupation of the affiant or declarant; and~~  
36 ~~—(b) That the solution or gas has the chemical composition~~  
37 ~~necessary for accurately calibrating it.] any fact relevant to the~~  
38 *preparation of the chemical solution or gas.*

39 3. Except as otherwise provided in subsections ~~[6 and 7.] 7 and~~  
40 ~~8,~~ the affidavit, *report* or declaration of a person who calibrates a  
41 device for testing another's breath to determine the concentration of  
42 alcohol in his breath is admissible in evidence in any criminal or  
43 administrative proceeding to prove ~~[-~~  
44 ~~—(a) The occupation of the affiant or declarant;~~



1 ~~—(b) That on a specified date the affiant or declarant calibrated the~~  
2 ~~device at a named law enforcement agency by using the procedures~~  
3 ~~and equipment prescribed in the regulations of the Committee on~~  
4 ~~Testing for Intoxication;~~

5 ~~—(c) That the calibration was performed within the period~~  
6 ~~required by the Committee's regulations; and~~

7 ~~—(d) Upon completing the calibration of the device, it was~~  
8 ~~operating properly.] any fact relevant to the calibration of the~~  
9 ~~device.~~

10 4. Except as otherwise provided in subsections ~~[6 and 7,]~~ **7 and**  
11 **8**, the affidavit , **report** or declaration made under the penalty of  
12 perjury of a person who withdraws a sample of blood from another  
13 for analysis by an expert as set forth in NRS 50.320 is admissible in  
14 any criminal or administrative proceeding to prove **[-**

15 ~~—(a) The occupation of the affiant or declarant;~~

16 ~~—(b) The identity of the person from whom the affiant or~~  
17 ~~declarant withdrew the sample;~~

18 ~~—(c) The fact that the affiant or declarant kept the sample in his~~  
19 ~~sole custody or control and in substantially the same condition as~~  
20 ~~when he first obtained it until delivering it to another; and~~

21 ~~—(d) The identity of the person to whom the affiant or declarant~~  
22 ~~delivered it.] any fact relevant to the withdrawal of the sample of~~  
23 ~~blood.~~

24 5. Except as otherwise provided in subsections ~~[6 and 7,]~~ **7 and**  
25 **8**, the affidavit , **report** or declaration of a person who receives from  
26 another a sample of blood or urine or other tangible evidence that is  
27 alleged to contain alcohol or a controlled substance, chemical,  
28 poison, organic solvent or another prohibited substance may be  
29 admitted in any criminal, civil or administrative proceeding to prove  
30 **[-**

31 ~~—(a) The occupation of the affiant or declarant;~~

32 ~~—(b) The fact that the affiant or declarant received a sample or~~  
33 ~~other evidence from another person and kept it in his sole custody or~~  
34 ~~control in substantially the same condition as when he first received~~  
35 ~~it until delivering it to another; and~~

36 ~~—(c) The identity of the person to whom the affiant or declarant~~  
37 ~~delivered it.] any fact relevant to the receipt and delivery of the~~  
38 ~~sample of blood or urine or other tangible evidence.~~

39 6. **The report of any person described in subsections 1 to 5,**  
40 **inclusive, may be signed by such a person and combined into a**  
41 **single report containing the reports of other persons described in**  
42 **subsection 1 to 5, inclusive, and except as otherwise provided in**  
43 **subsection 7 and 8, such a single report is admissible in evidence**  
44 **in any criminal, civil or administrative proceeding to prove any**



1 *fact relevant in the proceeding as provided in subsections 1 to 5,*  
2 *inclusive.*

3 7. If, at or before the time of the trial, the defendant establishes  
4 that:

5 (a) There is a substantial and bona fide dispute regarding the  
6 facts in the affidavit , *report* or declaration; and

7 (b) It is in the best interests of justice that the witness  
8 who signed the affidavit , *report* or declaration be cross-  
9 examined,

10 the court may order the prosecution to produce the witness and may  
11 continue the trial for any time the court deems reasonably necessary  
12 to receive such testimony. The time within which a trial is required  
13 is extended by the time of the continuance.

14 ~~[7.]~~ 8. During any trial in which the defendant has been  
15 accused of committing a felony, the defendant may object in writing  
16 to admitting into evidence an affidavit , *report* or declaration  
17 described in this section. If the defendant makes such an objection,  
18 the court shall not admit the affidavit , *report* or declaration into  
19 evidence and the prosecution may cause the person to testify in  
20 court to any information contained in the affidavit , *report* or  
21 declaration.

22 ~~[8.]~~ 9. The Committee on Testing for Intoxication shall adopt  
23 regulations prescribing the form of the affidavits , *reports* and  
24 declarations described in this section.

25 **Sec. 3.** NRS 50.320 is hereby amended to read as follows:

26 50.320 1. The affidavit , *report* or declaration of a chemist  
27 and any other person who has qualified in the district court of any  
28 county to testify as an expert witness regarding the presence in the  
29 breath, blood or urine of a person of alcohol, a controlled substance,  
30 or a chemical, poison, organic solvent or another prohibited  
31 substance, or the identity or quantity of a controlled substance  
32 alleged to have been in the possession of a person, ~~[which is]~~  
33 submitted to prove:

34 (a) The quantity of the purported controlled substance; or

35 (b) The concentration of alcohol or the presence or absence of a  
36 controlled substance, chemical, poison, organic solvent or another  
37 prohibited substance, as the case may be,  
38 is admissible in the manner provided in this section.

39 2. *The report of any person described in subsection 1 may be*  
40 *signed by such a person and combined into a single report*  
41 *containing the reports of other persons described in subsection 1,*  
42 *and such a single report submitted to prove any fact set forth in*  
43 *subsection 1 is admissible in the manner provided in this section.*

44 3. An affidavit , *report* or declaration ~~[which is]~~ submitted to  
45 prove any fact set forth in subsection 1 must be admitted into



1 evidence when submitted during any administrative proceeding,  
2 preliminary hearing or hearing before a grand jury. The court shall  
3 not sustain any objection to the admission of such an affidavit ,  
4 *report* or declaration.

5 ~~[3-]~~ 4. The defendant may object in writing to admitting into  
6 evidence an affidavit , *report* or declaration submitted to prove any  
7 fact set forth in subsection 1 during his trial. If the defendant makes  
8 such an objection, the court shall not admit the affidavit , *report* or  
9 declaration into evidence and the prosecution may cause the person  
10 to testify in court to any information contained in the affidavit ,  
11 *report* or declaration.

12 ~~[4-]~~ 5. The Committee on Testing for Intoxication shall adopt  
13 regulations prescribing the form of the affidavits , *reports* and  
14 declarations described in this section.

15 **Sec. 4.** NRS 50.325 is hereby amended to read as follows:  
16 50.325 1. If a person is charged with an offense listed in  
17 subsection 4, and it is necessary to prove:

- 18 (a) The existence of any alcohol;
- 19 (b) The quantity of a controlled substance; or
- 20 (c) The existence or identity of a controlled substance, chemical,  
21 poison, organic solvent or another prohibited substance,  
22 the prosecuting attorney may request that the affidavit , *report* or  
23 declaration of an expert or other person described in NRS 50.315  
24 and 50.320 , *including a single report containing the combined*  
25 *reports of such persons as provided in NRS 50.315 and 50.320*, be  
26 admitted into evidence at the trial or preliminary hearing concerning  
27 the offense. Except as otherwise provided in NRS 50.315 and  
28 50.320, the affidavit , *report* or declaration must be admitted into  
29 evidence.

30 2. If the request is to have the affidavit , *report* or declaration  
31 admitted into evidence at a preliminary hearing or hearing before a  
32 grand jury, the affidavit , *report* or declaration must be admitted into  
33 evidence upon submission. If the request is to have the affidavit ,  
34 *report* or declaration admitted into evidence at trial, the request must  
35 be:

- 36 (a) Made at least 10 days before the date set for the trial;
- 37 (b) Sent to the defendant's counsel and to the defendant, by  
38 registered or certified mail by the prosecuting attorney; and
- 39 (c) Accompanied by a copy of the affidavit , *report* or  
40 declaration and the name, address and telephone number of the  
41 affiant , *person or persons who signed the report* or declarant.

42 3. The provisions of this section do not prohibit either party  
43 from producing any witness to offer testimony at trial.

44 4. The provisions of this section apply to any of the following  
45 offenses:



1 (a) An offense punishable pursuant to NRS 202.257, 445A.170,  
2 445C.080, 493.130 or 639.283.

3 (b) An offense punishable pursuant to chapter 453, 484 or 488  
4 of NRS.

5 (c) A homicide resulting from driving, operating or being in  
6 actual physical control of a vehicle or a vessel under power or sail  
7 while under the influence of intoxicating liquor or a controlled  
8 substance or resulting from any other conduct prohibited by NRS  
9 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or  
10 488.420.

11 (d) Any other offense for which it is necessary to prove, as an  
12 element of the offense:

13 (1) The existence of any alcohol;

14 (2) The quantity of a controlled substance; or

15 (3) The existence or identity of a controlled substance,  
16 chemical, poison, organic solvent or another prohibited substance.

17 **Sec. 5.** NRS 172.135 is hereby amended to read as follows:

18 172.135 1. In the investigation of a charge, for the purpose of  
19 either presentment or indictment, the grand jury can receive no other  
20 evidence than such as is given by witnesses produced and sworn  
21 before them or furnished by legal documentary evidence or by the  
22 deposition of witnesses taken as provided in this title, except that the  
23 grand jury may receive any of the following:

24 (a) An affidavit, *report* or declaration from an expert witness or  
25 other person described in NRS 50.315, *including a single report*  
26 *containing the combined reports of such persons as provided in*  
27 *NRS 50.315*, in lieu of his personal testimony or deposition.

28 (b) An affidavit of an owner, possessor or occupant of real or  
29 personal property or other person described in NRS 172.137 in lieu  
30 of his personal testimony or deposition.

31 2. The grand jury can receive none but legal evidence, and the  
32 best evidence in degree, to the exclusion of hearsay or secondary  
33 evidence.

34 **Sec. 6.** NRS 616C.230 is hereby amended to read as follows:

35 616C.230 1. Compensation is not payable pursuant to the  
36 provisions of chapters 616A to 616D, inclusive, or chapter 617 of  
37 NRS for an injury:

38 (a) Caused by the employee's willful intention to injure himself.

39 (b) Caused by the employee's willful intention to injure another.

40 (c) Proximately caused by the employee's intoxication. If the  
41 employee was intoxicated at the time of his injury, intoxication must  
42 be presumed to be a proximate cause unless rebutted by evidence to  
43 the contrary.

44 (d) Proximately caused by the employee's use of a controlled  
45 substance. If the employee had any amount of a controlled substance



1 in his system at the time of his injury for which the employee did  
2 not have a current and lawful prescription issued in his name or that  
3 he was not using in accordance with the provisions of chapter 453A  
4 of NRS, the controlled substance must be presumed to be a  
5 proximate cause unless rebutted by evidence to the contrary.

6 2. For the purposes of paragraphs (c) and (d) of subsection 1:

7 (a) The affidavit, *report* or declaration of an expert or other  
8 person described in NRS 50.315, *including a single report*  
9 *containing the combined reports of such persons as provided in*  
10 *NRS 50.315*, is admissible to prove the existence of any alcohol or  
11 the existence, quantity or identity of a controlled substance in an  
12 employee's system. If the affidavit, *report* or declaration is to be so  
13 used, it must be submitted in the manner prescribed in  
14 NRS 616C.355.

15 (b) When an examination requested or ordered includes testing  
16 for the use of alcohol or a controlled substance, the laboratory that  
17 conducts the testing must be licensed pursuant to the provisions of  
18 chapter 652 of NRS.

19 3. No compensation is payable for the death, disability or  
20 treatment of an employee if his death is caused by, or insofar as his  
21 disability is aggravated, caused or continued by, an unreasonable  
22 refusal or neglect to submit to or to follow any competent and  
23 reasonable surgical treatment or medical aid.

24 4. If any employee persists in an unsanitary or injurious  
25 practice that imperils or retards his recovery, or refuses to submit to  
26 such medical or surgical treatment as is necessary to promote his  
27 recovery, his compensation may be reduced or suspended.

28 5. An injured employee's compensation, other than accident  
29 benefits, must be suspended if:

30 (a) A physician or chiropractor determines that the employee is  
31 unable to undergo treatment, testing or examination for the  
32 industrial injury solely because of a condition or injury that did not  
33 arise out of and in the course of his employment; and

34 (b) It is within the ability of the employee to correct the  
35 nonindustrial condition or injury.

36 The compensation must be suspended until the injured employee is  
37 able to resume treatment, testing or examination for the industrial  
38 injury. The insurer may elect to pay for the treatment of the  
39 nonindustrial condition or injury.

