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## Transportation and Motor Vehicles; Penalties for Driving While Intoxicated

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# Transportation and Motor Vehicles

## Transportation and Motor Vehicles; penalties for driving while intoxicated

N.R.S. §§268.—, 483.— (new); §§5.050, 42.010, 483.460, 483.490, 483.560, 484.379, 484.385, 484.3795 (amended).

SB 83 (McCorkle); STATS 1981, Ch 755

Prior to the enactment of Chapter 755, a first offender convicted of driving while under the influence of alcohol or drugs was guilty of a misdemeanor and could be punished by a suspension of driving privileges for thirty days to one year.<sup>1</sup> Chapter 755 requires that a first offender pay tuition for and attend classes on alcohol and drug abuse, and pay a fine of at least \$100.<sup>2</sup> In addition, the court may also suspend a first offender's privilege to drive for thirty days to one year, and may sentence the offender to imprisonment in the county jail for a term not more than six months.<sup>3</sup>

Under prior law, a second or subsequent offense for driving under the influence of alcohol or drugs committed within three years of the first offense was punishable by two years revocation of license and by imprisonment in the county jail for ten days to six months or a fine of not more than \$500.<sup>4</sup> Chapter 755 requires that a person convicted of driving under the influence of alcohol or drugs a second time within five years of a first offense in *any jurisdiction* serve at least ten days in the county jail and pay a fine of *at least* \$500, and lose his or her privilege to drive for at least six months.<sup>5</sup> A person convicted of driving under the influence of alcohol or drugs a third or subsequent time within five years of a second or subsequent offense in any jurisdiction must be jailed in the state prison for one to six years, and pay a fine of \$2000 to \$5000.<sup>6</sup>

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1. See STATUTES OF NEVADA 1975, c. 493, §2, at 788 (amending N.R.S. §484.379). See also N.R.S. §193.150 (sentencing for a misdemeanor in the absence of a specified penalty).

2. See N.R.S. §484.379 3.

3. See *id.* See also *id.* §§483.490 2, 484.379 4, 484.385 2 (any suspension of driving privileges, except as a result of a refusal to submit to a chemical sobriety test, will be modified if total suspension would work a hardship to an offender's ability to earn a living).

4. See STATUTES OF NEVADA 1975, c. 493, §§1, 2, at 787-88 (amending N.R.S. §§483.460, 484.379).

5. See N.R.S. §484.379 4.

6. See *id.* §484.379 5 (the person must be segregated from violent offenders and must be assigned to a minimum security institution, honor camp, or similar facility).

Chapter 755 makes treatment an alternative to conventional sentencing for a person who has been classified as an alcoholic or drug abuser by a counselor or physician certified to make that classification by the Department of Human Resources or the State Board of Medical Examiners.<sup>7</sup> These persons may elect, in lieu of other punishment, to pay for and undergo treatment approved by the court for at least one year, in addition to a ninety-day suspension of driving privileges and, if the person is a second offender, imprisonment in the county jail for five days, or, if the person is a third or subsequent offender, imprisonment in the county jail for thirty days.<sup>8</sup> Offenders who fail to satisfactorily complete the treatment will be sentenced to the fine and imprisonment to which they would have been sentenced had they not elected treatment, less any time actually served in confinement.<sup>9</sup>

In addition, Chapter 755 provides that no prosecuting attorney may dismiss a charge of driving under the influence of alcohol or drugs in exchange for a plea of guilty or nolo contendere to a lesser charge unless, in the prosecutor's judgment, the charge is not supported by probable cause or cannot be proved at trial.<sup>10</sup> Furthermore, no court may suspend the sentence of or place on probation any person convicted of driving while intoxicated if a provision in Chapter 755 requires a minimum jail term.<sup>11</sup>

Prior law made driving when the privilege to drive had been revoked or suspended, punishable by imprisonment for not more than six months or a fine of not more than \$500, or both.<sup>12</sup> Chapter 755 provides that if the suspension or revocation resulted from driving while under the influence of alcohol or drugs, the offender will be punished by imprisonment in the county jail for thirty days to six months and by a fine of not less than \$500.<sup>13</sup> In addition, Chapter 755 provides that the Department of Motor Vehicles may not restore any person's driving privilege which has been suspended or revoked as a result of a conviction for driving while intoxicated unless the person seeking the renewed privilege submits evidence that he or she is maintaining insurance or is financially responsible for operating any vehicle personally owned or owned by a member of his or her household.<sup>14</sup>

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7. *See id.* §484.379 6(a)(1), (2).

8. *See id.* §484.379 6(b), (c), (d).

9. *See id.* §484.379 7(a).

10. *See id.* §§483.560 2, 484.379 8, 484.379 5 2.

11. *See id.*

12. *See* STATUTES OF NEVADA 1973, c. 686, §1, at 1276 (amending N.R.S. §483.560); N.R.S. §193.150.

13. *See* N.R.S. §483.560 1.

14. *See id.* §483.—.

Under existing law, if a person under arrest refuses to submit to a chemical sobriety test at the request of a police officer, no test is to be given.<sup>15</sup> The Department of Motor Vehicles must, however, notify the person by mail that his or her privilege to drive is subject to suspension and that he or she has fifteen days to make a written request for a hearing.<sup>16</sup> Under prior law, if no hearing was requested, the person would lose the privilege to drive for six months.<sup>17</sup> Chapter 755 increases the penalty for refusing to take a chemical test to a one-year suspension of driving privileges for a first offense, and three years revocation of driving privileges for a second or subsequent offense.<sup>18</sup>

Finally, in order to recover exemplary damages, existing law requires the plaintiff to show that the defendant's conduct constituted oppression, fraud, or malice.<sup>19</sup> Chapter 755 specifies that a plaintiff may also recover punitive damages in situations where he or she has sustained personal injuries in an accident caused by a defendant who willfully used alcohol or drugs, knowing that he or she would thereafter operate a motor vehicle.<sup>20</sup> Existing law provides that a person causing death or substantial physical injury as a result of driving under the influence of alcohol or drugs must be punished by imprisonment for one to six years in the state prison, or pay a fine not to exceed \$5000.<sup>21</sup> Chapter 755 requires that a minimum fine of \$2000 must be paid in addition to the prison sentence.<sup>22</sup>

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15. *See id.* §484.385 1. *See also* [1972] OP. ATT'Y GEN. No. 59 (Feb. 22, 1972) (sobriety test for blood/alcohol content administered only upon driver's consent. Test for evidence of drugs in driver's blood, however, may be administered without consent).

16. *See* N.R.S. §484.385 1.

17. *See* STATUTES OF NEVADA 1973, c. 733, §5, at 1503 (amending N.R.S. §484.385 1).

18. *See* N.R.S. §484.385 1(a), 2. *See also id.* §484.385 1(b), (c) (providing actions against non-residents and residents without driving licenses).

19. *Compare id.* §42.010 with STATUTES OF NEVADA 1967, c. 247, §1, at 738 (amending N.R.S. §42.010). *See generally* Taylor v. Superior Court, 24 Cal. 3d 890, 895-899, 598 P.2d 854, 856-859, 157 Cal. Rptr. 693, 696-699 (CAL. CIV. CODE §3294, which is identical to N.R.S. §42.010, has been interpreted by the California Supreme Court to include driving while intoxicated within the meaning of the word "malice"). *See also* Allen v. Anderson, 93 Nev. 204, 206, 562 P.2d 487, 488 (1977) (plaintiff alleged that defendant, by operating his vehicle while intoxicated, had engaged in malicious conduct as contemplated by N.R.S. §42.010).

20. *See* N.R.S. §42.010 2.

21. *See id.* §484.3795 1.

22. *See id.*

## **Transportation and Motor Vehicles; drivers' licenses— revocation for failure to appear**

N.R.S. §§483.—, 483.— (new); §§483.450, 483.460, 483.490, 483.560 (amended).