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Transportation and Motor Vehicles; Drivers' Licenses- Revocation for Failure to Appear

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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.¹⁵ 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.¹⁶ Under prior law, if no hearing was requested, the person would lose the privilege to drive for six months.¹⁷ 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.¹⁸

Finally, in order to recover exemplary damages, existing law requires the plaintiff to show that the defendant's conduct constituted oppression, fraud, or malice.¹⁹ 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.²⁰ 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 \$5000.²¹ Chapter 755 requires that a minimum fine of \$2000 must be paid in addition to the prison sentence.²²

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).

SB 159 (Committee on Transportation); STATS 1981, Ch 283

Existing law provides that a violation of a written promise to appear in court given upon the issuance of a traffic citation is an unlawful act and the court may issue a warrant for the violation.¹ Chapter 283 augments this sanction by allowing the Department of Motor Vehicles (hereinafter referred to as the Department) to suspend a driver's license for failure to appear.² To impose this suspension the court will notify the Department when a driver licensed by the State of Nevada fails to appear in court under a written promise pursuant to a citation for other than a standing or parking offense.³ The Department must mail a notice to the driver that his or her driver's license will be suspended *unless* within thirty days after the mailing of the notice an appearance is made in court, the citation is dismissed, or a written request to the Department for a hearing is made.⁴ Unless the Department receives a request for a hearing or notice from the court that either the person appeared or the citation was dismissed, the Department will suspend the license thirty-one days after the mailing of the notice.⁵ The suspension will continue until the Department receives notice from the court that the driver has appeared or other disposition of the case has been made.⁶ In addition, Chapter 283 clarifies that the period for *all* revocations and suspensions by the Department will begin on the day specified within the notice as the effective date of the revocation or suspension.⁷

1. See N.R.S. §484.807.

2. See *id.* §483.— 3.

3. *Id.* §483.— 1.

4. See *id.* §483.— 2. See generally *Bell v. Burson*, 402 U.S. 535 (1971). The United States Supreme Court has held that due process under the Fourteenth Amendment requires notice and opportunity for a hearing prior to suspension or revocation of a driver's license. *Id.* at 539. Chapter 283 does not indicate the type of hearing that must be provided by the Department. See generally N.R.S. §483.—. The Supreme Court in *Bell* said only that the "hearing be appropriate to the nature of the case." 402 U.S. at 542. Cf. N.R.S. §483.470 (grounds for suspension of a driver's license without a prior hearing).

5. N.R.S. §483.— 3. See *id.* §483.490 3 (suspension will run concurrently with any other suspension).

6. See *id.* §483.— 3.

7. See *id.* §483.490 4.